2–26–97
Vol. 62 No. 38
Pages 8613–8866

Wednesday
February 26, 1997

Federal Register

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WASHINGTON, DC

WHEN: March 18, 1997 at 9:00 am

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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.

Rules and Regulations

Federal Register
Vol. 62, No. 38
Wednesday, February 26, 1997

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–71–AD; Amendment 39–9945; AD 97–05–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, that requires repetitive inspections to detect cracking of the front spar web of the center section of the wing, and repair, if necessary. This amendment is prompted by reports of fatigue cracking found in the front spar web. The actions specified by this AD are intended to prevent the leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, which could result in a potential fire hazard.

DATES: Effective April 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–200, –300, and –400 series airplanes was published in the Federal Register on November 18, 1996 (61 FR 58669). That action proposed to require repetitive HFEC inspections to detect cracking of the front spar web along the tangent point of the pocket fillet radii., and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Three commenters support the proposed AD.

Request to Extend Initial Compliance Time

One commenter requests that the proposal be revised to extend the compliance time for the initial inspection from the proposed 12 months to 18 months. The commenter requests this extension so that affected operators will be able to perform the inspection during a regularly scheduled maintenance visit. The extent of the work involved in the proposed inspection, and any necessary repair, cannot be accomplished at a line station, but must be accomplished when the airplane would be located at a main base where special equipment and trained personnel would be readily available. The commenter states that the adoption of the proposed compliance time of 12 months would require operators to schedule special times for the accomplishment of the inspection, at additional expense and downtime.

Further, this commenter states that the wing center section front spar web is inspected currently on some affected airplanes under the Supplemental Structural Inspection Document (SSID) program, which was mandated most recently by AD 94–15–18, amendment 39–8989 (59 FR 41233, August 11, 1994). There have been no reports of cracks found in this front spar web area during these required inspections. Additionally, the commenter states that, since June 1995, at least 3 airplanes in its fleet have undergone either NDT or visual inspections, and no cracks or other problems were found on the subject front spar web. The commenter requests that the FAA take this experience into consideration and extend the proposed compliance threshold as requested.

The FAA does not concur. Leakage of fuel into the forward cargo bay, as a result of fatigue cracking in the front spar web, is a significant safety issue, and the FAA has determined that the inspection threshold, as proposed, is warranted. The FAA considered not only these safety issues in developing an appropriate compliance time for this action, but the recommendations of the manufacturer, the availability of any necessary repair parts, and the practical aspect of accomplishing the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators.

The FAA points out that the manufacturer recommended that the inspections begin within 18 months after the release of Boeing Service Bulletin 747–57A2298, Revision 1, on September 12, 1996; that interval corresponds to most operators' scheduled ''C'' checks. The FAA took this recommendation into account, as well as the time that would be necessary to complete the rulemaking process, and found that a 12-month initial compliance time should fall well within the time that the majority of operators have regular maintenance visits scheduled.

As for the results of inspections previously performed on the affected area, the FAA points out that this AD action was based on reports from two operators who did find cracking in the wing center section front spar web on at least three airplanes; the longest crack found was 17 inches. While those cracks were found on Model 747–100 series airplanes, the FAA maintains that similar cracking is likely to develop on Model 747–200, –300, and –400 series airplanes up to line number 744 because those models have the same web thickness and similar loading as the Model 747–100.

In light of these factors, the FAA has determined that the 12-month initial compliance time, as proposed, is appropriate. The FAA points out that, if operators already have accomplished the initial inspection within the last 12 months prior to the effective date of the AD, they are given ''credit'' for that inspection as compliance with the initial inspection requirement of the AD. The final rule has been revised to clarify this point.

Request To Extend Repetitive Inspection Intervals

One commenter requests that the proposal be revised to extend the repetitive inspection interval from the proposed 1,400 cycles to 2,000 cycles. The commenter, a U.S. operator, states that it already has inspected several of the airplanes in its fleet and has found no cracking. In addition, the commenter points out that the inspection area will be visually inspected at regular intervals to detect corrosion as part of the Boeing 747 Corrosion Prevention and Control Program, which was mandated by AD 90–25–05, amendment 39–6790 (55 FR 49268, November 27, 1990).

The FAA does not concur, since the commenter provided no technical justification for an extension. The repetitive interval of 1,400 cycles is based on damage tolerance and crack growth analyses that the manufacturer performed. Additionally, the interval was calculated based on accomplishing high frequency eddy current (HFEC) inspections, and the effectiveness of those inspections in detecting cracking. The FAA acknowledges that visual inspections to detect corrosion of the area are mandated by AD 90–25–05; however, the HFEC inspections required by this AD will provide a much higher level of precision than visual inspections, and will be able to detect cracking far earlier than could be discovered by visual inspections alone.

Request To Revise Method of Counting Accumulated Cycles

One commenter requests that the proposal be revised to include a provision specifying that pressurization cycles of 2.0 psi or less need not be counted as a flight cycle when determining the number of flight cycles relative to the proposed compliance thresholds. The commenter states that cabin pressure is the main contributor to stresses in the center section front spar web, but a cabin pressure of 2.0 psi would result in stresses of less than one-fourth the normal operating level. Further, with a maximum cabin pressure at 2.0 psi, the fatigue damage per cycle would be reduced by a factor of approximately 100.

The FAA does not concur with the commenter's request. The FAA considers that flights with less than 2.0 psi cabin pressure may contribute a negligible amount of fatigue damage to the front spar web of the wing center section. However, a pressurization cycle of 2.0 psi or less is a typical pressure used during flight training, and is not typical of normal operation of the affected airplanes. The FAA does not consider it appropriate to include various provisions in an AD applicable to a unique use of an affected airplane. Paragraph (e) of this final rule provides for the approval of alternative methods of compliance to address these types of unique circumstances.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the one change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 485 Model 747–200, –300, and –400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 105 airplanes of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $302,400, or $2,880 per airplane, per inspection.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–05–01 Boeing: Amendment 39–9945. Docket 96–NM–71–AD.

Applicability: Model 747–200, –300, and –400 series airplanes, up to and including line number 744, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the leakage of fuel into the forward cargo bay through fatigue cracks in the front spar web, which could result in a potential fire hazard, accomplish the following:

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracking of the front spar web of the center section of the wing, in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have accumulated 12,000 to 17,999 total landings as of the effective date of this AD: Perform the initial inspection within 12 months after the effective date of this AD, unless previously accomplished within the last 12 months. Perform this inspection again prior to the accumulation of 18,000 total landings or within 1,400 landings, whichever occurs later; after accomplishing the initial inspection, and thereafter at intervals not to exceed 1,400 landings.

(2) For all other airplanes: Perform the initial inspection prior to the accumulation of 18,000 total landings or within 12 months after the effective date of this AD, whichever occurs later. Repeat this inspection thereafter at intervals not to exceed 1,400 landings.

(b) Except as provided by paragraph (c) of this AD, if any cracking is detected during an inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with paragraph (b)(1) or (b)(2) of this AD, as applicable. Thereafter repeat the HFEC inspection required by paragraph (a) of this AD at intervals not to exceed 1,400 landings.

(1) If any vertical crack is found that is less than 10 inches in length, repair in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996.

(2) If any vertical crack is found that is 10 inches or greater in length; or if any crack is found that has extended in a diagonal direction (regardless of length); or if any crack is found that would affect an existing repair; repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) In lieu of accomplishing the procedures specified in paragraph (b) of this AD: If a crack in the front spar web is detected during an HFEC inspection required by paragraph (a) of this AD, prior to further flight, operators may accomplish the procedures for an optional HFEC inspection to confirm cracking, as described in paragraph III.D.2. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996.

(1) If this optional inspection is accomplished and cracking is not confirmed, thereafter repeat the HFEC inspection specified in paragraph (a) of this AD at intervals not to exceed 1,400 landings.

(2) If this optional inspection is accomplished and confirms cracking, prior to further flight, repair the cracking in accordance with paragraph (b)(1) or (b)(2) of this AD, as applicable.

(d) For airplanes that are required to perform an initial HFEC inspection in accordance with paragraph (a)(1) of this AD: Within 30 days after accomplishing the initial inspection, submit a report of inspection results, negative or positive, that includes the information identified in paragraphs (d)(1) through (d)(5) of this AD, to the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) Airplane serial number.

(2) Total number of landings accumulated.

(3) Total number of hours time-in-service accumulated.

(4) Location, size and orientation of each crack.

(5) Whether fuel leakage resulted from the crack.

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

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

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

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 2, 1997.

Issued in Renton, Washington, on February 19, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4555 Filed 2–25–97; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–51–AD; Amendment 39–9946; AD 97–05–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator. This amendment is prompted by reports of binding of the aileron due to water freezing between the upper channel fairings and the surface of the leading edge of the aileron. The actions specified by this AD are intended to prevent water from freezing these areas, which could result in binding of the aileron and subsequent reduced controllability of the airplane.

DATES: Effective April 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Embraer, Empresa Brasileira De Aeronautica S/A, Sao Jose Dos Campos, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7358; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the Federal Register on May 22, 1995 (60 FR 27056). That action proposed to require removal of the upper channel fairings and their shims; and rework of the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Reference Additional Service Information

The only commenter, a U.S. operator, supports the proposal, but requests that it be revised to reference EMBRAER Service Bulletin 120–57–0021, Change 2, dated March 8, 1996, as an appropriate source of service information. This change to the service bulletin revises Change 1, which was referenced in the proposal, by including additional rework instructions and correcting a reference to the Structural Repair Manual.

The FAA concurs. The FAA finds that accomplishment of the actions in accordance with either Change 1 or Change 2 of the EMBRAER service bulletin will provide an acceptable level of safety and meet the intent of this AD action. The final rule has been revised to reference both service documents. Operators who already have accomplished the actions in accordance with Change 1 will not have to perform any additional work.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 263 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost for required parts is expected to be negligible. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $157,800, or $600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–05–02 Embraer: Amendment 39–9946. Docket 95–NM–51–AD.

Applicability: Model EMB–120 series airplanes; as listed in EMBRAER Service Bulletin No. 120–57–0021, Change 2, dated March 8, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent binding of the aileron and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 3,000 hours time-in-service after the effective date of this AD, remove the upper channel fairings and their shims; and rework the riveting holes, the aileron sealing canvas (aerodynamic seals), and the protective covers of the trim tab hinge fittings of the aileron and elevator; in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993; or Change 2, dated March 8, 1996.

(b) As of the effective date of this AD, no person shall install any aileron sealing canvas having part number (P/N) 120–08130–001, 120–08131–001, or 120–08132–001, on any airplane unless that canvas has been reworked in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993; or Change 2, dated March 8,1996.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small 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, Atlanta ACO.

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

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

(e) The actions shall be done in accordance with EMBRAER Service Bulletin No. 120–57–0021, Change 1, dated September 10, 1993; or EMBRAER Service Bulletin No. 120–57–0021, Change 2, dated March 8, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Embraer, Empresa Brasileira De Aeronautica S/A, Sao Jose Dos Campos, Brazil. Copies may be inspected at the FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 2, 1997.

Issued in Renton, Washington, on February 19, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4553 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–CE–07–AD; Amendment 39–9947; AD 97–05–03]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Avionics, Inc. Models GNS–XLS or GNS–XL Flight Management Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all owners/operators of aircraft equipped with AlliedSignal Avionics Inc. (AlliedSignal) Models GNS–XLS or GNS–XL global positioning systems (GPS) Flight Management Systems. This action requires inserting a limitation into the Airplane Flight Manual (AFM) or Flight Manual Supplement Limitations Section prohibiting the use of these AlliedSignal GPS units on previously published non-precision approaches. This action is prompted by recent reports of flight course deviations because of erroneous information provided by the GPS Flight Management System. The actions specified by this AD are intended to prevent deviation from an intended flight path during a non-precision approach to an airport.

DATES: Effective March 18, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–07–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Flores, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4133, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

AlliedSignal recently notified the FAA that their global positioning system (GPS) Flight Management System Models GNS–XLS and GNS–XL are malfunctioning. The AlliedSignal Models GNS–XLS and GNS–XL are used to determine the flight course of an airplane for previously published non-precision approaches to an airport. The GPS flight management system is integrated into the software of the flight management system recorder (black box) in the airplane. These GNS–XLS and GNS–XL GPS can be installed on, but are not limited to the following airplanes:

Manufacturer	Models
British Aerospace, Ltd. (BAe).	146–100A and 146–200A.
Cessna Aircraft Corporation.	525, 550, and 560.
Dausault Aviation	Mystere-Falcon 20 and 50.
Avions Marcel Dassault	Falcon 10.
Gulfstream Aerospace	G–1159 (G–II) and G–1159A (G–III).
Raytheon Corporate Jets	Hawker 800.
Israel Aircraft Industries, Ltd.	1124.
Sabreliner Corporation	NA–65.
Learjet Inc	35.
Jetstream Aircraft Ltd	4101.

Problems arose with these GPS flight management systems units after an installation of a GNS–XLS unit for certification in a Cessna Model 550 airplane. During this flight certification, the AlliedSignal Model GNS–XLS GPS provided erroneous information to the Flight Management System which caused the airplane to deviate from the previously published non-precision approach. Further investigation with flight tests on other airplane models confirmed this software malfunction. The manufacturer conducted bench tests on these models, and was also successful in duplicating the deviation occurring within the GPS flight management software while it is used in a previously published non-precision approach situation. The tests also showed that this malfunction is only randomly occurring approximately 20 percent of the time.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent deviation of an intended flight path during a non-precision approach to an airport.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other AlliedSignal Models GNS–XLS and GNS–XL GPS Flight Management Systems of the same type design, this AD requires inserting the following limitation into the Operations Limitations Section of the AFM or Flight Manual Supplement:

Operating Limitations

The GNS–XL (or GNS–XLS) is not approved for non-precision approaches.

Note

The GNS–XL (or GNS–XLS) may generate misleading information during non-precision GPS or Overlay approaches due to software limitations.

The FAA and AlliedSignal are currently working together toward an approved revision to the software problem on these GPS Flight Management System units.

Compliance Time of this AD

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average daily usage of the affected airplanes will have different ranges throughout the fleets. For example, one owner may operate the airplane 5 hours TIS in one day, while another operator may operate the airplane 5 hours TIS in one week. In order to ensure that all of the owners/operators of the affected airplanes have the chance to insert the limitation into the operating limitations of their Airplane Flight Manual or Flight Manual Supplement within a reasonable amount of time, the FAA is setting a compliance time of within the next 5 days after the effective date of this AD.

Determination of the Effective Date of the AD

Since a situation exists (misleading flight course information to the pilot during non-precision approaches) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–07–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–05–03 ALLIEDSIGNAL AVIONICS INC.: Amendment 39–9947; Docket No. 97–CE–07–AD.

Applicability: Models GNS–XLS and GNS–XL global positioning systems, part numbers (P/N) 17960–0102–XXXX and P/N 18355–0101–XXXX respectively, installed on, but not limited to the following airplanes, certificated in any category.

Manufacturer	Models
British Aerospace, Ltd. (BAe).	146–100A and 146–200A.
Cessna Aircraft Corporation.	525, 550, and 560.
Dausault Aviation	Mystere-Falcon 20 and 50.
Avions Marcel Dassault	Falcon 10.
Gulfstream Aerospace	G–1159 (G–II) and G–1159A (G–III).
Raytheon Corporate Jets	Hawker 800.
Israel Aircraft Industries, Ltd.	1124.
Sabreliner Corporation	NA–65.
Learjet Inc	35.
Jetstream Aircraft Ltd	4101.

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

Compliance: Required within the next 5 days after the effective date of this AD, unless already accomplished.

To prevent deviation of the intended flight path during a non-precision approach to an airport, accomplish the following:

(a) Insert the following limitation into the Operations Limitations Section of the Airplane Flight Manual (AFM) or Flight Manual Supplement:

Operating Limitations

The GNS–XL (or GNS–XLS) is not approved for non-precision approaches.

Note

The GNS–XL (or GNS–XLS) may generate misleading information during non-precision GPS or Overlay approaches due to software limitations.

(b) Inserting a copy of this AD into the Limitations section as described in paragraph (a) of this AD is considered compliance with the requirements of this AD.

(c) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(d) An alternative method of compliance or adjustment of compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

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

(e) Copies of this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9947) becomes effective on March 18, 1997.

Issued in Kansas City, Missouri, on February 19, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4662 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Docket No. 96–ACE–20]

Amendment to Class E Airspace, Imperial, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule published on November 29, 1996 (61 FR 60525), amends the Class E airspace area at Imperial Municipal Airport, Imperial NE. The effect of that rule is to provide additional controlled airspace for aircraft executing the new Standard Instrument Approach Procedure (SIAP) at Imperial Municipal Airport. This document confirms the effective date of that rule.

EFFECTIVE DATE: March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the Federal Register on November 29, 1996, (61 FR 60525). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on March 27, 1997. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Kansas City, MO, on January 29, 1997.

Charles R. Raymond,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 97–3748 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ACE–19]

Amendment to Class E Airspace, Olathe, KS; Correction

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the state identifier, geographic coordinates, and navigational aid designation of a final rule that was published in the Federal Register on November 19, 1996 (61 FR 58783), Airspace Docket No. 96–ACE–19. The Final Rule amended the Class E airspace area at Johnson County Executive Airport, Olathe, KS.

EFFECTIVE DATE: March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–29595, Airspace Docket No. 96–ACE–19, published on November 19, 1996 (61 FR 58783), revised the description of the Class E airspace area at Olathe, KS. An error was discovered in the state identifier, geographic coordinates and navigational aid designation for the Olathe, KS, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace area at Olathe, KS, as published in the Federal Register on November 19, 1996 (61 FR 58783), (Federal Register Document 96–29595; page 58784, column 1) is corrected to read as follows:

§ 71.71 [Corrected]

* * * * *

ACE KS E5 Olathe, KS [Corrected]

Johnson County Executive Airport, Olathe, KS
(lat. 38°50′51″N., long. 94°44′15″W.)
Johnson County VOR/DME
(lat. 38°50′26″N., long. 94°44′12″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Johnson County Executive Airport and within 2.2 miles each side of the Johnson County VOR/DME 184° radial extending from the 6.4-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on January 17, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 97–3749 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1314

Book-Entry Procedures for TVA Power Securities Issued Through the Federal Reserve Banks; Correction

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the regulations which were published in the Federal Register on Tuesday, January 7, 1997 (62 FR 920). The regulations relate to the book-entry procedures for TVA power securities issued through the Federal Reserve Banks.

EFFECTIVE DATE: February 26, 1997.

FOR FURTHER INFORMATION CONTACT: Edward S. Christenbury at (423) 632–2241.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of these corrections revised TVA's book-entry procedures to incorporate recent changes in commercial and property law and to bring them into accord with the revised book-entry procedures of the United States Department of the Treasury published in the Federal Register on August 23, 1996 (61 FR 43,626).

Need for Correction

As published, the regulations contain certain items which could be confusing and are in need of clarification.

Correction of Publication

Accordingly, the regulations (FR Doc. 97–228) as published on January 7, 1997, at 62 FR 920, are corrected as follows:

§ 1314.4 [Corrected]

1. On page 921, in the third column, in § 1314.4, paragraph (a)(1)(i), line one, the word ''book-entry'' is corrected to read ''Book-entry''.

§ 1314.5 [Corrected]

2. On page 922, in the first column, in § 1314.5, paragraph (a), lines five and six, the words ''security account'' are corrected to read ''Security Account''.

3. On page 922, in the first column, in § 1314.5, paragraph (b), line fifteen, the word ''participant'' is corrected to read ''Participant''.

§ 1314.6 [Corrected]

4. On page 922, in the second column, in § 1314.6, paragraph (a), line twenty, the words ''security account'' are corrected to read ''Security Account''.

5. On page 922, in the second column, in § 1314.6, paragraph (b)(2), line five, the words ''security account'' are corrected to read ''Security Account''.

§ 1314.8 [Corrected]

6. On page 922, in the third column, in § 1314.8, line fourteen, the word ''number'' is corrected to read ''Number''.

Dated: February 11, 1997.

John L. Dugger,

Assistant General Counsel.

[FR Doc. 97–4744 Filed 2–25–97; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 113

[T.D. 97–9]

RIN 1515–AB97

Entry of Softwood Lumber Shipments From Canada

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

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations establishing additional entry requirements applicable to shipments of softwood lumber from Canada. The interim amendments involve the collection of certain additional information for purposes of monitoring and enforcing an agreement between the Governments of the United States and Canada regarding trade in softwood lumber.

DATES: Interim rule effective February 26, 1997; comments must be submitted by April 28, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Manes, Office of Field Operations (202–927–1133).

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1996, the United States entered into the Softwood Lumber Agreement (the Agreement) with Canada under the authority of section 301(c)(1)(D) of the Trade Act of 1974, as amended (19 U.S.C. 2411(c)(1)(D)), which authorizes the United States Trade Representative (the USTR) to ''enter into binding agreements'' with a foreign country that commit the foreign country to, *inter alia,* eliminate any burden or restriction on U.S. commerce resulting from an act, policy or practice of the foreign country. The Agreement, which went into effect on April 1, 1996, was specifically intended to provide a satisfactory resolution to certain acts, policies and practices of the Government of Canada affecting exports to the United States of softwood lumber which had been the subject of an investigation initiated by the USTR under section 302(b)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2412(b)(1)(A)), and which on October 4, 1991, pursuant to section 304(a) of the Trade Act of 1974, as amended (19 U.S.C. 2414(a)), had been found by the USTR to be unreasonable and to burden or restrict U.S. commerce. The Agreement is the product of a consultative process established by the United States and Canada and involving the participation of the U.S. Government, Canadian federal and provincial governments and, where appropriate, industries and other interested parties in both countries.

The Agreement refers specifically to softwood lumber mill products classified in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS) that were ''first manufactured'' into a product of one of those HTSUS subheadings in the Canadian provinces of Ontario, Quebec, British Columbia or Alberta. The Agreement requires that Canada assess fees on exports of such softwood lumber in each of the five years following April 1, 1996, based on the following schedule: (1) For total shipments up to 14.7 billion board feet, free (no fee); (2) for any amount shipped in excess of 14.7 billion board feet but not in excess of 15.35 billion board feet, US$50 per thousand board feet in the first year and with annual adjustments for inflation in subsequent years; and (3) for any amount shipped in excess of 15.35 billion board feet, US$100 per thousand board feet and with annual adjustments for inflation in subsequent years. The Agreement also allows an additional amount of exports of such softwood lumber in excess of 14.7 billion board feet without the payment of a fee if the average price of a benchmark softwood lumber price exceeds a prescribed ''trigger price'' during any quarterly period. In order to control and monitor exports of softwood lumber first manufactured in Ontario, Quebec, British Columbia and Alberta, the Agreement provides that Canada will issue an export permit for each shipment of such softwood lumber and that Canada will collect any required fee for amounts of lumber exported in excess of 14.7 billion board feet upon issuance of the export permit.

The Agreement requires the collection of information by Canada in connection with the issuance of export permits for softwood lumber first manufactured in Ontario, Quebec, British Columbia and Alberta and the collection of information by the United States in connection with import transactions involving such lumber.

With regard to the import end, the Agreement obligates the United States to require that the U.S. importer provide specific information in connection with the entry of the lumber under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484). The information required to be collected under the Agreement includes the following three specific data elements which are not already required under the Customs laws and regulations, the last two of which are required by the Agreement to be collected as soon as practicable after the entry into force of the Agreement: (1) The province of first manufacture of the lumber; (2) the export permit number issued in Canada for the shipment; and (3) the fee status of the lumber for which the export permit was issued (whether the lumber in the shipment was attributed to a quantity to which no fee applies or to a quantity that is subject to the US$50 fee or to a quantity that is subject to the US$100 fee or to a quantity that is covered by the trigger price mechanism).

In order to facilitate monitoring of the Agreement and in order to ensure that Canadian exporters have obtained the appropriate permits, the Agreement also sets forth various cooperative measures which include the periodic exchange of export and import information collected by the two countries under the Agreement.

On June 5, 1996, the USTR published a notice in the Federal Register (61 FR 28626) setting forth its determination that the Agreement will be subject to the provisions of section 306 of the Trade Act of 1974, as amended (19 U.S.C. 2416), and that the USTR will monitor Canadian compliance with the Agreement pursuant to section 306 and will take action under section 301(a) of the Trade Act of 1974, as amended (19

U.S.C. 2411(a)), if Canada fails to comply with the Agreement. Noting that adherence to the terms of the Agreement is vital to the achievement of its objectives, and consistent with the authority conferred on the USTR by section 141 of the Trade Act of 1974, as amended (19 U.S.C. 2171), to coordinate and draw upon the resources of other Federal agencies in connection with the performance of functions of the USTR regarding the proper administration and execution of trade agreement programs (including those arising out of unfair trade practice cases), the notice stated that the USTR, the Department of Commerce, Customs, and other agencies as appropriate, will carefully monitor and vigorously enforce the Agreement and that, to that end, Customs will provide to the USTR and to the Department of Commerce the data that Customs collects on imports (including province of origin and the type of permit) of softwood lumber from Canada.

The purpose of this document is to provide an appropriate regulatory context for the new requirements resulting from the Agreement as discussed above. Since those requirements relate to a special class of imported products, Customs believes that it would be appropriate to add to Part 12 of the Customs Regulations (19 CFR Part 12) a new § 12.140 to cover the Agreement provisions at issue.

Paragraph (a) of new § 12.140 reflects the basic onus that the Agreement places on exports of Canadian softwood lumber that are subject to the export permit and fee requirements and, by implication, on the U.S. importer (see also the below discussion of the changes to the bond provisions of Part 113 of the regulations). These paragraph (a) provisions are necessary to ensure that the basic purpose of the Agreement (the collection of export fees on appropriate shipments) is achieved.

Paragraph (b) of new § 12.140 specifies the information required to be collected pursuant to the Agreement. With regard to data concerning province of first manufacture, the regulatory text provides for submission of such data for all entries of softwood lumber products from Canada (rather than only those products first manufactured in Ontario, Quebec, British Columbia, or Alberta) because, in order to effectively determine if lumber is being entered with a false claim of province or territory of first manufacture so as to contravene the terms of the Agreement, it is necessary to be able to compare the entered quantity of lumber not only to the productive capacity of the claimed province or territory of first manufacture but also to the productive capacity of other provinces or territories.

Paragraph (c) of new § 12.140 addresses the untimely issuance of export permit numbers by the Canadian Government. In recognition of the fact that processing or other procedural delays may arise in connection with the issuance of export permit numbers, this paragraph provides for up to 10 additional working days to file the entry summary documentation setting forth the information required under the Agreement if the Canadian Government has not issued the export permit number within the 10-day filing period prescribed in § 142.12(b) or § 142.23 of the regulations. If the export permit number is not issued within the maximum 20-working-day period allowed under this paragraph, the text requires that the entry summary documentation be filed on the next (21st) business day with surrogate information inserted in place of the actual data in the export permit number and export fee payment status fields. The use of surrogate information in such cases is only intended to enable the importer to effect an entry summary filing (in particular electronically) and thus does not absolve an importer from his other responsibilities under the regulatory texts implementing the Agreement. The provision in this paragraph regarding the additional 10-working-day period for filing the entry summary documentation is at this point intended to be a temporary measure, and the need for retaining this provision within the new regulatory texts will be reviewed by the United States no later than April 1, 1997, in the context of a review of the overall operation of the Agreement and the interim regulations set forth in this document.

Finally, as an interim arrangement, paragraph (d) of new § 12.140 provides that an importer is not required to declare the number or type of export permit issued by Canada with respect to softwood lumber products that are imported into Canada, processed in Canada, and then exported to the United States; surrogate information also would be used instead in such cases. This exception to the paragraph (b) requirements has been included because the Government of Canada has to date not agreed to issue export permits for such remanufactured products because it takes the position that they are not covered by the Agreement; it is the position of the U.S. Government that such products are covered by the Agreement. Discussions with the Government of Canada are ongoing to ensure that the export permit and other requirements of the Agreement will be applied to these remanufactured products, and the need for retaining this exception within the new regulatory texts also will be reviewed by the United States no later than April 1, 1997. The volume of imports of remanufactured lumber historically has been small and, as a practical matter, it is expected that any future imports of such products would only involve certain specialty items. Customs notes that for any import transaction in which this exception is applied, the U.S. importer must maintain, and make available for Customs review when requested, appropriate records to establish that the exception was properly applied to the imported product. The use of this exception will be closely examined by Customs, and any filing of false information regarding the applicability of this exception may give rise to the assessment of penalties under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592).

This document also includes amendments to § 113.62 of the Customs Regulations (19 CFR 113.62) which sets forth the basic importation and entry bond conditions and consequences of default thereof. These amendments involve: (1) The addition of a bond condition as new paragraph (k) to reflect the importer's obligation under paragraph (a) of new § 12.140; and (2) in redesignated paragraph (l) (formerly paragraph (k)), the addition of a new paragraph (5) to set forth the consequences of a default on the new paragraph (k) bond condition, which would be liquidated damages in an amount equal to the highest export fee provided for under the Agreement.

In consideration of the fact that the data required under the regulatory text set forth in this document is required for the entry of the subject merchandise, the interim ''(a)(1)(A) list'' published in the Federal Register on July 15, 1996 (61 FR 36956) pursuant to 19 U.S.C. 1509(a)(1)(A) will be modified accordingly.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th

Street, N.W., Suite 4000, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim regulation because it is within the foreign affairs function of the United States. The collection of information provided for in this interim regulation is required under the terms of the Softwood Lumber Agreement with Canada and is necessary to ensure effective monitoring of the operation of that Agreement. Furthermore, for the same reasons and because the collection of this information is required to begin as soon as practicable after entry into force of the Softwood Lumber Agreement, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0065.

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

The collection of information in these regulations is in § 12.140. This information is required in connection with the entry of certain softwood lumber products from Canada and will be used by the U.S. Customs Service to administer, and monitor compliance with, the Softwood Lumber Agreement with Canada. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 3,000 hours.

Estimated average annual burden per respondent/recordkeeper: 20 hours.

Estimated number of respondents and/or recordkeepers: 150.

Estimated annual number of responses: 350,000.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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 should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

List of Subjects

19 CFR Part 12

Bonds, Canada, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Trade agreements.

19 CFR Part 113

Air carriers, Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Accordingly, Parts 12 and 113, Customs Regulations (19 CFR Parts 12 and 113), are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read, and a specific authority citation for § 12.140 is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.140 also issued under 19 U.S.C. 1484, 2416(a), 2171.

2. A new center heading and new § 12.140 are added to read as follows:

Softwood Lumber From Canada

§ 12.140 Entry of softwood lumber from Canada.

The requirements set forth in this section are applicable for as long as the Softwood Lumber Agreement, entered into on May 29, 1996, by the Governments of the United States and Canada, remains in effect.

(a) *Encumbrance regarding export permit and export fee.* In the case of softwood lumber first manufactured into a product classifiable in subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90, Harmonized Tariff Schedule of the United States (HTSUS), in the Province of Ontario, Quebec, British Columbia, or Alberta, the requirement that the Government of Canada issue an export permit and collect the appropriate export fees under the Softwood Lumber Agreement attaches to and encumbers the product when it is imported into the United States. Such imported merchandise remains subject to the encumbrance until the Government of Canada issues an export permit and collects the appropriate fees. The merchandise shall be released by Customs subject to the following conditions: The importer of record assumes an obligation to ensure within 20 working days of release that such export permit is issued by the Government of Canada and to provide sufficient information to satisfy U.S. Customs that the encumbrance no longer attaches or, if the merchandise remains encumbered at the expiration of 20 working days, to pay any liquidated damages assessed under the Customs bond.

(b) *Reporting requirements.* Except as otherwise provided in paragraph (d) of this section, in the case of a softwood lumber product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 that is imported from Canada and that was manufactured (that is, subjected to any processing operation other than mere loading, unloading or processing necessary to maintain the condition of the product) in Canada, whether or not such product was previously subjected to any processing operation outside Canada, the following information shall be included on the entry summary, Customs Form 7501, or on an electronic equivalent:

(1) The Canadian province or territory in which the product was first manufactured; and

(2) In the case of a product first manufactured into a product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 in the Province of Ontario, Quebec, British Columbia, or Alberta:

(i) The export permit number issued by the Government of Canada for the product; and

(ii) An indication of the export fee payment status of the product for which the permit was issued according to the following categories:

(A) Category A: No payment of an export fee because the exported product falls within the base amount of 14.7 billion board feet. This category includes products for which the export permit was issued without an indication of the export fee status;

(B) Category B: Payment of the export fee applicable to a product exported in excess of 14.7 billion board feet but not in excess of 15.35 billion board feet;

(C) Category C: Payment of the export fee applicable to a product exported in excess of 15.35 billion board feet; or

(D) Category D: No payment of an export fee where the product was exported in excess of 14.7 billion board feet because the average price of a benchmark softwood lumber price exceeds a prescribed trigger price during any quarterly period as determined by the Governments of Canada and the United States. If the issued permit pertains to this category, the specific quarterly period shall also be indicated on the Customs Form 7501 or electronic equivalent.

(c) *Untimely issuance of export permit.* If an export permit for the product has not been issued by the Government of Canada on or before the required date for filing the entry summary documentation as provided in § 142.12(b) or § 142.23 of this chapter, the importer shall have a maximum of 10 additional working days to file the entry summary documentation setting forth all of the information specified in paragraph (b)(2) of this section. If an export permit for the product has not been issued by the Government of Canada within the maximum time period specified in this paragraph, the entry summary or electronic equivalent shall be filed on the next business day and shall be completed in pertinent part as follows:

(1) The export permit number field shall be completed by inserting as many eights as are necessary to complete the field; and

(2) The export fee payment status field shall be completed by inserting an ''A'' followed by two zeros.

(d) *Absence of export permit number and fee status data for certain remanufactured softwood lumber products.* In the case of a softwood lumber mill product classifiable in HTSUS subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 that is imported from Canada and that was first manufactured in Canada in the Province of Ontario, Quebec, British Columbia, or Alberta, if no export permit for the product is issued by the Government of Canada because the product was previously subjected to processing operations outside Canada, the entry summary, Customs Form 7501, or an electronic equivalent, shall include the Canadian province or territory in which the product was first manufactured and also shall be completed in pertinent part as follows:

(1) The export permit number field shall be completed by inserting as many nines as are necessary to complete the field; and

(2) The export fee payment status field shall be completed by inserting an ''A'' followed by two zeros.

PART 113—CUSTOMS BONDS

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

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

* * * * *

2. Section 113.62 is amended:

a. By redesignating paragraph (k) as paragraph (l);

b. In the penultimate sentence of paragraph (l)(4) of redesignated paragraph (l), by removing the reference ''paragraph (k)(1)'' and adding, in its place, the reference ''paragraph (l)(1)''; and

c. By adding a new paragraph (k) and adding a new paragraph (l)(5) at the end of newly designated paragraph (l) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(k) *Agreement to ensure and establish issuance of softwood lumber export permit and collection of export fees.* In the case of a softwood lumber product imported from Canada that is subject to the requirement that the Government of Canada issue an export permit pursuant to the Softwood Lumber Agreement, the principal agrees, as set forth in § 12.140(a) of this chapter, to assume the obligation to ensure within 20 working days of release of the merchandise, and establish to the satisfaction of Customs, that the applicable export permit has been issued by the Government of Canada.

(l) * * *

(5) If the principal defaults on agreements in the condition set forth in paragraph (k) of this section only, the obligors agree to pay liquidated damages equal to $100 per thousand board feet of the imported lumber.

Approved: February 20, 1997.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–4682 Filed 2–25–97; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 083–4036a, PA 083–4037a, PA 069–4035a; FRL–5690–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Source-Specific VOC and NO_X RACT Determinations, and 1990 Base Year Emissions for One Source; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: This action corrects the citation of a direct final rule, which was published on Friday, December 20, 1996 (61 FR 67229). This action pertains to the Pennsylvania source-specific RACT determinations for three sources: Caparo Steel Company, Sharon Steel Company, and Pennsylvania Electric Company—Williamsburg Station.

EFFECTIVE DATE: February 26, 1997.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 566–2185, or Carolyn Donahue, (215) 566–2095.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1996 (61 FR 67229) EPA published a direct final rule approving a SIP revision submitted by Pennsylvania pertaining to Pennsylvania source-specific RACT determinations for Caparo Steel, Sharon Steel, and Penelec—Williamsburg, and 1990 Base year emissions for Sharon Steel Company.

Need for Correction

As published, the direct final rule contains an error which may prove to be misleading and is in need of clarification. The error is typographical in nature; the state submittal from the Pennsylvania Department of Environmental Protection (PADEP) correctly cites the emission limit for Penelec—Williamsburg.

Correction of Publication

Accordingly, the publication on December 20, 1996 (61 FR 57232, FR Doc. 96–32369), Part 52, § 52.2037 is being amended by correcting an error in paragraph (f). On page 67232, in the first column, in the second sentence of paragraph (f) the words, ''* * * 21.7 pounds of NO_X per million British thermal units (lb/MMBtu) * * *'' are corrected to read, ''* * * 21.7 pounds of NO_X per ton of coal fired (lb/ton) * * *''.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore 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 involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 this 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 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 4, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–4661 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA50–7123a; FRL–5692–8]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part, and disapproving in part, and taking no action in part on the Regulations of the Southwest Air Pollution Control Authority (SWAPCA) for the control of air pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington, as revisions to the Washington State Implementation Plan (SIP). These revisions pertain to General Regulations for Air Pollution Sources administered by SWAPCA. These revisions were submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on January 24, 1996. In accordance with Washington statutes, SWAPCA rules must be at least as stringent as the WDOE statewide rules.

DATES: This action is effective on April 28, 1997, unless adverse or critical comments are received by March 28, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101; and, the State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Wayne Elson, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1463.

SUPPLEMENTARY INFORMATION:

I. Background

SWAPCA amended Chapter 400 of its rules on September 21, 1995. The WDOE, on behalf of the Governor, submitted the amended regulations to EPA on January 24, 1996, as a revision to the Washington SIP. The amended regulations pertain to General and Operating Permit Regulations for Air Pollution Sources administered by SWAPCA, and adopt by reference various other State regulations. Some of the regulations adopted by reference have been the subject of previous EPA actions on the SIP.

II. This Action

The State of Washington's January 24, 1996, request for SIP revision includes regulations contained in Chapter 400 of SWAPCA's rules. Certain of these regulations are amendments to those currently contained in the SIP; others are entirely new additions.

A. Unchanged

EPA approves SWAPCA 400–052, –151, –161, –190, –205, –210, –220, –240, and –260 regulations currently in the SIP, and unchanged by the January 24, 1996, revisions.

B. Modifications

EPA approves the modifications and/or additions to the SWAPCA 400–010, –020, –030, –040, –050, –060, –070, –074, –075, –076, –081, –091, –100, –101, –105, –107, –109, –110, –112, –113, –114, –115, –171, –172, –200, –230, –250, –270, and –280 regulations currently in the SIP. Subsections of these regulations that EPA takes no action on are noted. Some are editorial changes which are housekeeping in nature. Most of those subsections EPA also took no action in May 3, 1995 (60 FR 21703). These minor changes are not substantial and provide technical or administrative clarification. The language in twelve of these regulations has been modified only slightly from that used in versions currently in the approved SIP. They include: 400–010 Policy and Purpose, 400–020 Applicability, 400–060 Emission Standards for General Process Units, 400–081 Startup and Shutdown, 400–091 Voluntary Limits on Emissions, 400–107 Excess Emissions, 400–112 Requirements for New Sources in Nonattainment Areas, 400–113 Requirements for New Sources in Attainment or Nonclassifiable Areas, 400–114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source, 400–171 Public Involvement, 400–200 Creditable Stack Height and Dispersion Techniques, and 400–250 Appeals.

The remaining changed regulations are described as follows. In 400–030, a definition (15) ''closure'' or stopping all processes at a facility is added. In 400–030, the second sentence of definitions (14) ''Class I area'' and (45) ''Mandatory

Class I Federal area'' are not being acted on as they may create a future conflict if a SWAPCA source is found to affect a Class I area that is not listed. In 400–030, a definition for (37) ''good agricultural practices'' is added. In 400–030, a definition for (86) ''upgraded gasoline dispensing facilities'' is added. EPA is taking no action on 400–040(2) Fallout and 400–040(4) Odors as these provisions are not related to the criteria pollutants regulated under the SIP. In 400–070, Emission Standards for Certain Source Categories, no action is taken on (5) Sulfuric Acid Plants, as it is not related to the criteria pollutants regulated under the SIP. Grain elevators and other wood waste burners source categories are deleted, (6) gasoline dispensing facilities and (7) abrasive blasting are added. In 400–074, Gasoline Transport Tankers, a new section is added requiring registration of owner or operator of gasoline transport tanker, gasoline loading facility or petroleum product transport tanker doing business in SWAPCA jurisdiction. In 400–075, Emission Standards for Sources Emitting Hazardous Air Pollutants, no action is being taken on the whole section because it has no relation to the criteria pollutants that are regulated under the SIP. In 400–076, Emissions Standards for Sources Emitting Toxic Air Pollutants, no action is being taken on this section because it has no relation to the criteria pollutants that are regulated under the SIP. In 400–100, Registration and Operating Permits, new registration requirements and inspections are added to this section. In 400–101, Sources Exempt from Registration Requirements, is revised to include further exemption categories and elaborates on others. In 400–105, Records, Monitoring and Reporting, no action is taken on additional emission inventory reporting requirements for sources that include toxic or hazardous air pollutants because it has no relation to the criteria pollutants that are regulated under the SIP. Inventory requirements are added for high VOC and NO_X emissions in ozone nonattainment areas. In 400–109, Notice of Construction Application, new section is added specifying conditions and applicability for filing applications for new sources. Subsection (3) lists nine activities that apply to Notice of Construction. Four of the activities are recognized as federally enforceable. They are as follows: (a) New construction or installation (d) Modification, alteration or replacement of existing process or control equipment (e) Change of registered owner (purchase or sale of source, facility or equipment) and (f) Change of location of operations of existing portable and stationary equipment. EPA takes no action on the remaining activities: (b) Change of existing approved emission limits (including Title V opt-out requests, (c) Review of existing or installed equipment operating without prior approval, (g) Review of existing equipment with an expired or lapsed approval or registration, (h) Review of a case-by-case RACT, BACT, MACT or other similar determination, and (i) Other activities as identified by the Authority. These activities would need source specific SIP revisions to change SIP requirements. 400–110 New Source Review, elaborates on applicability and clarifies and adjusts fee structure. Subsections are added to describe those conditions where a New Source Review is not required. Emission standards table added for technical clarification. Subsection (8) is added describing when Temporary, Emergency, or Substitution Sources, would come under new source requirements. Subsection (9) is added requiring new or upgraded Gasoline Dispensing Facilities to submit a Notice of Construction. In 400–115, Standards of Performance for New Sources, EPA is taking no action on this section as this provision is not related to the criteria pollutants regulated under the SIP. 400–172, Technical Advisory Council is not a requirement of the Clean Air Act (CAA), and does not directly apply to the regulation of the criteria pollutants, and thus is not being acted for inclusion into the SIP. 400–230 Regulatory Actions & Civil Penalties is expanded to identify and describe the process for each of the common types of regulatory orders issued by SWAPCA. 400–270 Confidentiality of Records and Information is a new section on confidentiality of records submitted to SWAPCA. 400–280 Powers of Authority describes statutory authority of SWAPCA as it exists in RCW 70.94.

C. Disapprovals

EPA already acted to disapprove a number of sections of the SWAPCA rules on May 3, 1995 (80 FR 21703), but notes that these disapproved sections are still included in WDOE SIP revisions that were submitted to EPA, with minor revisions. EPA still considers its disapproval of these sections to be in effect, and by this action is again disapproving the following sections: 400–040(1) (c) and (d) and 400–040(6)(a) Standards for Maximum Emissions; 400–050 Emission Standards for Combustion and Incineration Units, the exception provision in paragraph (3); 400–120 Bubble Rules; 400–130 Acquisition and Use of Emission Reduction Credits; 400–131 Issuance of Emission Reduction Credits; 400–136 Use of Emission Reduction Credits. 400–141 Prevention of Significant Deterioration (PSD); and 400–180 Variance. The only disapproval in addition to those sections disapproved on May 3, 1995 (80 FR 21703) is 400–030 Definition (80) SIP. A SIP is defined upon approval by EPA, not when it is submitted to EPA for approval as stated.

III. Summary of EPA Action

EPA is approving the following sections, with the following exceptions, of SWAPCA 400—General Regulation for Air Pollution Sources: 010; 020; 030 except the second sentences of (14), (45) and (80); 040 except (1)(c), (1)(d), (2), (4) and the exception provision of (6)(a); 050 except the exception provision of (3); 052; 060; 070 except (5); 074; 081; 091; 100 except the first sentence of (3)(a)(iv) and (4); 101; 105; 107; 109 except for (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i), 110; 112; 113; 114; 151; 161; 171; 190; 200; 205; 210; 220; 230; 240; 250; 260; 270; and 280.

EPA is disapproving the following sections: 400–030 (80); 040(1) (c) and (d); the exception provision of 040(6)(a); the exception provision in 050(3); 120; 130; 131; 136; 141; and 180. EPA is taking no action on the following sections: the second sentence of 030 (14), and (45); 040(2); 040(4); 070(5); 075; 076; the first sentence of 100(3)(a)(iv); 100(4); 109 (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i); 115; and 172.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 28, 1997 unless, by March 28, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 28, 1997.

Nothing in this action should be construed as permitting or allowing or

establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Review

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.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 1997.

Charles Findley,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(70) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(70) On January 24, 1996 the Director of WDOE submitted to the Regional Administrator of EPA regulations of the SWAPCA for the control of air pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington (SWAPCA 400—General Regulation for Air Pollution Sources).

(i) Incorporation by reference.

(A) The January 24, 1996, letter from WDOE to EPA submitting requests for revisions to the Washington SIP to include regulations of the SWAPCA for the control air of pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington, as revisions to the Washington SIP, State-effective September 21, 1995. EPA is approving the following sections of SWAPCA 400—General Regulation for Air Pollution Sources: 010; 020; 030 except the second sentence of (14), (45) and (80); 040 except (1)(c), (1)(d), (2), (4) and (6)(a); 050 except the exception provision of (3); 052; 060; 070 except (5); 074; 081; 091; 100 except the first sentence of (3)(a)(iv) and (4); 101; 105; 107; 109 except for (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i), 110; 112; 113; 114; 151; 161; 171; 190; 200; 205; 210; 220; 230; 240; 250; 260; 270; and 280.

[FR Doc. 97–4659 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300454; FRL–5590–8]

RIN 2070–AC78

Spinosad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes a time-limited tolerance with an

expiration date of November 15, 1999 for residues of the insecticide Spinosad in or on the raw agricultural commodity cottonseed. DowElanco submitted a petition to EPA under the Federal Food Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170) requesting the tolerance.

EFFECTIVE DATE: This regulation becomes effective February 26, 1997. The tolerance expires on November 15, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300454], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300454], should be 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 a copy of objections and hearing requests to Rm. 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: OPP-docket@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 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300454]. 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.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, 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. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, issued a notice, published in the Federal Register of July 10, 1996, (61 FR 36373)(FRL–5380–7), which announced that DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268–1054, had submitted a pesticide petition (PP 6F4735) to EPA requesting that the Administrator, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the insecticide Spinosad in or on the raw agricultural commodity cottonseed at 0.02 parts per million (ppm). Spinosad is a fermentation derived tetracyclic macrolide product produced by the *actinomycete, saccharopolyspora spinosa* and consists of two structurally related compounds, namely, Spinosyn A (CAS No. 131928–60–7) and Spinosyn D (CAS No. 131929–63–) whose chemical structures differ by a single methyl group. Spinosyn A is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione. Spinosyn D is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione.

In the Federal Register of November 22, 1996 (61 FR 59437) EPA issued a second notice of filing to amend the petition to bring it into conformity with the Food Quality Protection Act (FQPA) of 1996. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and assessments to support its conclusion that the petition complied with FQPA.

In March 1995 Spinosad was accepted by EPA as a reduced risk pesticide. Reduce risk status was granted primarily due to Spinosad's low acute mammalian toxicity, low non-target organism toxicity and compatibility with integrated pest management. The criteria initiating EPA's reduced risk pesticide process are set forth in Pesticide Regulation Notice 93–9 dated July 21, 1993 and the January 22, 1993 Federal Register (58 FR 5854).

There were no comments or requests for referral to an advisory committee received in response to the notice.

I. Background and Statutory Authority

The FQPA of 1996 (Pub. L. 104–170) 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(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Section 408(b)(2)(D) specifies factors EPA is to consider in establishing a tolerance. Section 408(b)(3) 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. Section 408(b)(4)requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission. If so, and EPA does not propose to adopt that level, EPA must publish for public comment a notice explaining the reasons for departing from the Codex level. Section 408(b)(2)(A) governs EPA's establishment of tolerances and incorporating the provisions of section 408(b)(2)(C) and (D).

II. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many

adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (NOEL).

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose significant risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FQPA requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Consistent with sections 408(b)(2)(C) and (D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has also assessed the toxicology data base for spinosad in its evaluation of applications for registration on cotton. EPA has sufficient data to assess the hazards of Spinosad and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of Spinosad on cottonseed at 0.02 ppm. EPA's assessment of the database, dietary exposures and risks associated with establishing these tolerances follows:

A. Toxicology Data Base

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include the following:

1. A battery of acute toxicity studies placing the technical Spinosad in Toxicity Category III and IV.

2. In a 21–day dermal study in rabbits the NOEL for dermal and systemic toxicity was 1,000 milligrams per kilogram per day (mg/kg/day) (limit dose). New Zealand White strain rabbits were given 15 dermal applications at 0, 100, 500, or 1,000 mg/kg/day for 21 days . Under the conditions of the test, there was no evidence of treatment-related toxicity from dermal application at doses up to 1,000 mg/kg/day.

3. In a 13–week feeding neurotoxicity study, Fischer 344 strain rats were given daily levels of 0, 2.2, 4.3, 8.6, or 42.7 mg/kg body weight for males and 0, 2.6, 5.2, 10.4 or 52.1 mg/kg/day for females. There were no effects observed on the functional observational battery (FOB), motor activity, or histological observations of the nervous system. Therefore, the NOEL for acute mammalian neurotoxicity in rats is ≥42.7 or 52.1 mg/kg/day for male and female rats, respectively.

4. A chronic 2–year feeding study in dogs at dietary doses of 1.44, 2.68, or 8.46 mg/kg/day in males, and 1.33, 2.72 or 8.22 mg/kg/day respectively in females with a NOEL of 2.68 mg/kg/day (100/120 ppm).

5. Two mouse carcinogenicity studies have been submitted and fulfill the requirement for mouse carcinogenicity testing. In the first study mice were dosed at 0, 3.4, 11.4 and 50.9 mg/kg/day in males and 4.2, 13.8, and 67.0 mg/kg/day respectively in females with systemic NOEL of 11.4 mg/kg/day for males and 13.8 mg/kg/day in females. In the second study, involving only females, dosing was at 0, 1.3 and 41.5 mg/kg/day highest dose tested (HDT). These studies, along with additional information from the petitioner do not indicate a potential for carcinogenicity.

6. A 24–month chronic feeding/carcinogenicity study in rats. The chronic feeding study using rats indicates that the rat is a less sensitive species than the dog with respect to Spinosad. The rat feeding study data support the NOEL selected from the dog feeding study as the basis of the RfD. The rat feeding study is currently determined to be supplemental since additional histopathology data on the animals that died during the study are required to upgrade the study from supplementary status. NOELs and lowest observed effect levels (LOELs) will be established for this study once the additional data are reviewed. There were no treatment related carcinogenic effects observed at any dose level.

7. Mutagenicity studies including an *in vitro* forward mutation assay (mouse lymphoma cells), *in vitro* chromosome aberration assay (Chinese hamster ovary cells), an *in vivo* micronucleus assay (mice), and an *in vitro* unscheduled DNA synthesis assay (primary rat hepatocytes) showed no mutagenic activity associated with Spinosad.

8. A metabolism study in rats demonstrates that there were no major differences between the bioavailability, routes of excretion, or metabolism of ^{14}C-Spinosad (Factor A) and ^{14}C-Spinosad (Factor D). Urine and fecal excretions were almost completed at 48 hours post-dosing.

9. An oral developmental toxicity study in rats with a developmental NOEL of ≥200 mg/kg/day highest dose tested (HDT). The NOEL for maternal toxicity is ≥200 mg/kg/day HDT. An oral developmental toxicity study in rabbits with a developmental NOEL of ≥50 mg/kg/day HDT. The NOEL for maternal toxicity is ≥50 mg/kg/day HDT. With respect to both studies there were no developmental effects that could be attributed to administration of Spinosad up to the HDT.

10. A two generation reproduction study in rats at dietary doses of 0, 3, 10, and 100 mg/kg/day with a NOEL for parental effects at 10 mg/kg/day based upon increases in heart, kidney, liver, spleen, and thyroid weights (both sexes), corroborative histopathology in the spleen and thyroid (both sexes), heart and kidney (males only), and histopathologic lesions in the lungs and mesenteric lymph nodes (both sexes), stomach (females only), and prostate in the high dose group (100 mg/kg/day).

The NOEL for reproductive effects was also 10 mg/kg/day based upon both maternal and reproductive effects including decreases in litter size, survival (F2 litters only), and body weights in the offspring, and increased incidence of dystocia and/or vaginal bleeding after parturition with associated increases in mortality in the dams in the high dose group (100 mg/kg/day).

B. Toxicological Profile

1. *Chronic effects.* Based on the available chronic toxicity data, EPA has established the Reference Dose (RfD) for spinosad at 0.0268 mg/kg/day based on a NOEL of 2.68 mg/kg/day and an uncertainty factor of 100. The NOEL is based on a 2–year dog chronic feeding study.

2. *Acute toxicity.* Based on the available acute toxicity data, EPA has determined that Spinosad does not pose any acute dietary risk.

3. *Carcinogenicity.* Based on the available carcinogenicity studies in two rodent species Spinosad has not been determined to be a human carcinogen. A final cancer classification using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992) is pending; however, the current data does not indicate that a cancer risk assessment will be necessary.

III. Aggregate Exposure

1. *Food and fee uses.* For purposes of assessing the potential dietary exposure from use of Spinosad on cotton EPA has estimated aggregate exposure based on the TMRC from the tolerance for spinosad on cottonseed at 0.02 ppm. The TMRC is obtained by multiplying the tolerance level residue for cottonseed (0.02 ppm) by the food consumption factors for foods derived from cottonseed. Cottonseed is fed to animals thus exposure to residues in cottonseed might result if such residues are transferred to meat, milk, poultry or eggs. However, based upon the results of animal metabolism studies, EPA concludes there is no reasonable expectation of finite residues of spinosad in poultry tissues and eggs from cotton uses. With respect to meat and milk extrapolation from existing ruminant metabolism, studies indicates that secondary residues of spinosad in ruminant commodities are expected to be negligible. The analysis also included two commodities processed from cottonseed; cottonseed oil and cottonseed meal. Tolerance level residues on the oil and meal were assumed however EPA notes that Spinosad residues do not concentrate in processed commodities, and therefore this risk estimate is very conservative. The dietary risk assessment will be reevaluated with respect to secondary residues in ruminant tissues and milk upon submission and review of the field trial data for cotton gin by-products. There are no other established U.S. tolerances for Spinosad, and there are no registered uses for Spinosad on food or feed crops in the United States.

As indicated above, in conducting this exposure assessment, EPA has made very conservative assumptions—100 percent of cottonseed will contain spinosad residues including cottonseed oil and meal, and those residues would be at the level of the tolerance —which results in an overestimate of human exposure. Thus, in making a safety determination for these tolerances, EPA is taking into account this conservative exposure assessment.

2. *Potable water.* There is no established Maximum Concentration Level (MCL) for residues of Spinosad in drinking water. Because the Agency lacks specific water-related exposure data for most pesticides, EPA has begun and nerly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. EPA then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. This analysis can be found in the Special Record for the FQPA. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges EPA is continuing to examine are all well below the level that would cause spinosad to exceed the RfD, if the tolerance being considered in this document are granted. EPA has therefore concluded that the potential exposure associated with spinosad in water, even at the higher levels EPA is considering as a conservative upper bound, would not prevent EPA from determining that there is a reasonable certainty of no harm if the proposed tolerance on cottonseed is granted.

3. *Non-dietary uses.* EPA has not estimated non-occupational exposure for Spinosad since there are no chronic or acute residential risks expected from the use of Spinosad on cotton. The potential for non-occupational exposure to the general population is, thus, not expected to be significant.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408 (b)(2)(D)(V) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity in a meaningful way. EPA is commencing a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to risk assessments, and therefore believes that in most cases there is no available information concerning common mechanism that can be scientifically applied to tolerance decisions. Where it is clear that a particular pesticide may share a significant common mechanism with other chemicals, a tolerance decision may be affected by common mechanism issues. The Agency expects that most tolerance decisions will fall into the area in between, where EPA can not reasonably determine whether a pesticide does or does not share a

common mechanism of toxicity with other chemicals (and, if so, how that common mechanism should be factored into a risk assessment). In such circumstances, the Agency will reach a tolerance decision based on the best, currently available and useable information, without regard to common mechanism issues. However, the Agency will also revisit such decisions when the Agency learns how to apply common mechanism information to pesticide risk assessments.

In the case of Spinosad, it is unlikely that this pesticide shares a common mechanism of toxicity with other pesticides since Spinosad is a unique insecticide structurally unrelated to other registered pesticides. However since EPA has determined that it does not now have the capability to apply the information in its files to a resolution of common mechanism issues in a manner that would be useful in a risk assessment, this tolerance determination does not take into account common mechanism issues. The Agency will reexamine the tolerance for Spinosad, if reexamination is appropriate, after the Agency has determined how to apply common mechanism issues to its pesticide risk assessments.

IV. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of Spinosad, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Available data indicate that no developmental toxicity was observed in the rabbit study at the HDT (50 mg/kg/day). Slight maternal toxicity was observed in the rabbit at the HDT and consisted of marginal reductions in body weight gain, defecation, and food consumption. In the rat developmental study, a slight 1–day reduction in maternal body weight gain and body weight was observed at the HDT, but otherwise no developmental or maternal toxicity was observed at a high dose level (200 mg/kg/day). Developmental toxicity studies established the NOELs for maternal and developmental toxicity at ≥50 mg/kg/day in rabbits (HDT) and ≥200 mg/kg/day in rats HDT.

Reproductive toxicity appears to be related to systemic maternal toxicity, and was characterized by decreases in mean litter size and body weight throughout lactation. The NOEL for reproductive toxicity is 10 mg/kg/day.

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 database unless EPA determines that such additional factor is not necessary to protect the safety of infants and children. EPA believes that reliable data support using a different safety factor (usually 100x) and not the additional safety factor when EPA has a complete data base and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the traditional safety factors.

Based on current data requirements, the database relative to pre- and post-natal toxicity is complete. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or postnatal sensitivity.

Therefore, EPA concludes that reliable data support use of a 100-fold safety factor and an additional 10-fold safety factor is not needed to protect the safety of infants and children.

V. Determination of Safety for U.S. Population Including Infants and Children

1. *Reference dose (RfD).* A chronic dietary exposure/risk assessment was performed for Spinosad using an RfD of 0.02 mg/kg/day based on a NOEL of 2.68 mg/kg/day from a 2–year dog feeding study with an uncertainty factor of 100. Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base, EPA has concluded that aggregate exposure to Spinosad from it use on cotton will utilize less than 1 percent of the RfD for the U.S. population and for all of the 22 population subgroups including children and infants. 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 significant risks to human health.

2. *Aggregate risks*. Based upon the available toxicity and exposure data and worst case assumptions for dietary exposure aggregate chronic risks are expected to be less than 1% of the RfD for the general U.S. population, including all population subgroups. As indicated above although EPA has not yet identified a water exposure figure based on available environmental data, Spinosad is not expected to be mobile in soil or water environments and poses relatively little threat to ground and drinking water. EPA therefore concludes that there is reasonable certainty that no harm will result to consumers, including infants and children, from aggregate exposure to spinosad residues.

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 toxicology studies described above. There is no evidence at this time that Spinosad causes endocrine effects.

B. Metabolism in Plants and Animals

The metabolism of spinosad in plants and animals is adequately understood for the purpose of this tolerance. There are no Codex maximum residue levels established for residues of Spinosad on cottonseed. There is a practical analytical method for detecting and measuring levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in the tolerance. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703–305–5805.

C. Summary of Findings

Tolerances are time limited to allow for development and review of residue field trials on cotton gin by products. The analysis for Spinosad using tolerance level residues shows that the proposed use on cotton will not cause exposure to exceed the levels at which EPA believes there is an appreciable risk. All population subgroups examined by EPA are exposed to Spinosad residues at levels well below 100 percent of the RfD for chronic effects. Based on the information and data considered, EPA concludes that the proposed time-limited tolerance will be safe. Therefore, the tolerance is established as set forth below.

VII. 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 the new section 408(d) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use its current procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 28, 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 above (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 issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as 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 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.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300454]. 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 Operations 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 Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. 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 (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 to this effect 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 of the rule 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: February 13, 1997.

Daniel M.Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

b. By adding a new § 180.495 to read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) [Reserved]

(b) A time-limited tolerance is established for residues of the insecticide Spinosad. Factor A is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a, 6b-tetradecahydro-14-methyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione. Factor D is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione.

Commodity	Parts per million	Expiration Date
Cottonseed	0.02	November 15, 1999

[FR Doc. 97–4625 Filed 2–25–97; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 261

[FRL–5694–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On July 18, 1996, the Environmental Protection Agency (EPA or Agency) published a final rule granting a petition submitted by United Technologies Automotive, Inc. (UTA), Dearborn, Michigan, to exclude (or ''delist''), conditionally, on a one-time, upfront basis, a certain solid waste generated by UTA's chemical stabilization treatment of lagoon sludge at the Highway 61 Industrial Site in Memphis, Tennessee, from the lists of hazardous wastes in §§ 261.31 and 261.32. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency concluded that UTA's petitioned waste will not adversely affect human health and the environment. Delisting levels for cadmium, chromium, lead, nickel, and cyanide which would be protective of human health and the environment were calculated and promulgated. This action addresses the fact that the actual volume of waste to be disposed is 39,400 cubic yards, instead of the 20,500 cubic yards estimated by the petitioner prior to publication of the final rule. Therefore, today's document corrects the delisting levels for the constituents of concern by using the dilution attenuation factor (DAF) of 79 for 40,000 cubic yards, instead of the DAF of 96 for 20,500 cubic yards.

EFFECTIVE DATE: July 18, 1996.

ADDRESSES: The RCRA regulatory docket for the final rule and today's document is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–96–UTEF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Tennessee Department of Environment and Conservation, please see below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Judy Sophianopoulos, Enforcement and Compliance Branch, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3104, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact Wayne Gregory, Tennessee Department of Environment and Conservation (TDEC), 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, (615) 532–0847. If you wish to copy documents at TDEC, please contact Mr. Gregory for copying procedures and costs.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Document

Each delisting level in the final rule was calculated by multiplying the health-based level for each constituent of concern by the dilution attenuation factor (DAF) of 96 for a one-time disposal of an estimated volume of 20,500 cubic yards of petitioned waste. See 61 FR 37399, July 18, 1996. The petitioner reported that the actual volume to be disposed is 39,400 cubic yards. The DAF for this volume is 79. See the proposed rule for this petitioned waste at 61 FR 14703, April 3, 1996.

Therefore, today's document corrects the delisting level for each constituent of concern by multiplying each health-based level by 79.

II. Corrections to the Preamble of Final Rule

On page 37399, of the Federal Register of July 18, 1996, Table 1 of the Preamble:

The delisting level for chromium is corrected to read: ''7.9; delisting level is set at less than 5.0, the toxicity characteristic level.''

The delisting level for cyanide is corrected to read: ''15.8; (cyanide extraction must be conducted using deionized water.)''

The delisting levels for cadmium, lead, and nickel are corrected to read: ''0.40,'' ''1.18,'' and '' 7.9,'' respectively.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: January 31, 1997.

Jewell A. Harper,

Deputy Director, Waste Management Division.

Correction to Final Rule

PART 261—[CORRECTED]

Appendix IX [Corrected]

On page 37402, of the Federal Register of July 18, 1996, in appendix IX to part 261, in the third column of table 1, condition (3) is corrected to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * *
		(3) *Delisting Levels:* All leachable concentrations for these constituents must not exceed the following levels (ppm): Cadmium—0.40; cyanide—15.8; lead—1.18; and nickel—7.9. The leachable concentration of chromium must be less than 5.0 ppm. Metal concentrations in the waste leachate must be measured by the method specified in 40 CFR 261.24. The cyanide extraction must be conducted using deionized water. Total cyanide concentration in the leachate must be measured by Method 9010 or Method 9012 of SW–846.
*	*	* * *

[FR Doc. 97–4755 Filed 2–25–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

Regulation of International Accounting Rates; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The FCC is correcting an error in § 43.51 of Part 43 of Title 47 of the Code of Federal Regulations which appeared in the Federal Register on February 6, 1997 (62 FR 5535).

FOR FURTHER INFORMATION CONTACT: Kathryn O'Brien, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections replace the § 43.51 (d) designation with the designation as § 43.51(e). The incorrect designation was a result of § 43.51(d) being reviewed by the Office of Management and Budget (OMB). OMB's approval of § 43.51(d) was effective on February 6, 1997, thereby necessitating a correction to the labeling of § 43.51(d) as contained in these final rules.

Need for Correction

As published, the final rules contain labeling errors that may prove to be misleading and are in need of corrections to properly identify the rule sections.

Correction of Publication

The following corrections are made in § 43.51 of Part 43 of Title 47 of the Code of Federal Regulations published in the Federal Register on February 6, 1997 (62 FR 5535).

§ 43.51 [Corrected]

1. On page 5541, first column, line 6, the amendatory instruction for § 43.51 is correctly revised to read as follows:

2. Section 43.51 is amended by revising paragraph (e) to read as follows:

2. On page 5541, first column, line 11, change ''(d) *International settlement policy*.'' to ''(e) *International settlement policy*.''

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4709 Filed 2–25–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Parts 52 and 64

[CC Docket No. 92–105; FCC 97–51]

The Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 19, 1997, the Commission released a First Report and Order adopting various measures related to N11 codes. The First Report and Order is intended both to direct national assignment of certain N11 codes and to allow current allocation of other N11 codes to remain in place.

DATE EFFECTIVE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's First Report and Order in the matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, FCC 97–51, adopted February 18, 1997, and released February 19, 1997. The Commission concurrently released a Further Notice of Proposed Rulemaking in the same docket. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Analysis of Proceeding

In the *First Report and Order,* the Commission allows the incumbent LECs, in addition to the states and Bell Communications Research (Bellcore), to continue to perform the N11 code administration functions that they performed at the time of enactment of the 1996 Act amendments to the 1934 Act, until further Commission action. The Commission also adopts several other important measures regarding abbreviated dialing arrangements. Specifically, the Commission responds to a request for an N11 code that could be dialed to reach non-emergency police services by assigning 311 on a nationwide basis for this purpose. Wherever 311 is currently in use for other purposes, however, the Commission would allow that use to continue until the local government in that area was prepared to activate a non-emergency 311 service. In the *First Report and Order* the Commission also concludes that, as the incumbent LECs can do currently, all providers of telephone exchange service must be able to have their customers call 611 and 811 to reach their repair and business service offices. The Commission also concludes that a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services. Finally, the Commission responds to a request for an N11 code that could be used throughout the nation to reach telecommunications relay services by directing Bellcore to assign 711 on a nationwide basis for this use. The Commission declines, however, to: (1) mandate that N11 numbers be made available for access to information services; (2) mandate that an N11 code be designated for access to government agencies; or (3) disturb the current allocation of various N11 codes for access to emergency services, directory assistance, and LEC repair and business offices.

Ordering Clauses

Accordingly, *it is ordered,* pursuant to Sections 1, 4(i), 201–205 and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, and 251(e)(1), that the *First Report and Order* is hereby Adopted.

It is further ordered, that Bellcore, as the NANP administrator, shall assign 711 as a national code for TRS use as of the effective date of this *First Report and Order,* as discussed in this *First Report and Order.*

It is further ordered, that Bellcore, as the NANP administrator, shall assign 311 as a national code for access to non-emergency police and other government services as of the effective date of this *First Report and Order,* as discussed in this *First Report and Order.*

It is further ordered, that when a provider of telecommunications services receives a request from an entity to use 311 for access to non-emergency police and other government services in a particular jurisdiction, it must ensure that, within six months of the request: (1) entities that were assigned 311 at the local level prior to the effective date of this *First Report and Order* relinquish non-compliant uses; and (2) it takes any steps necessary (for example reprogramming switch software) to complete 311 calls from its subscribers to a requesting 311 entity in its service area.

It is further ordered, that (1) all providers of telephone exchange

service, both incumbents and new market entrants, whether facilities or non facilities-based providers of telephone exchange service, should be enabled to use the 611 and 811 codes for repair services and business office uses as the incumbent LECs do now; and (2) by dialing these N11 numbers, customers should be able to reach their own carriers' repair or business services.

It is further ordered, that a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services.

It is further ordered, that the North American Numbering Council will explore how rapidly abbreviated dialing arrangements could be deployed and report back to the Commission on this issue.

It is further ordered that GSA's request for a national N11 assignment is denied and that NASTD's request for a national assignment is granted in part as discussed in this *First Report and Order*, and otherwise denied.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4787 Filed 2–25–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 960416112–7026–05; I.D. 020597C]

RIN 0648–AJ04

Atlantic Tuna Fisheries; Regulatory Adjustments

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

ACTION: Interim final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic bluefin tuna (ABT) fisheries to provide authority for NMFS to close and/or reopen all or part of the Angling category in order to provide for equitable distribution of fishing opportunities throughout the species range. The regulatory amendments are necessary to increase the geographic and temporal scope of data collection from the scientific monitoring quota established for the United States under the international ABT stock recovery program. Additionally, this rule allows a more equitable geographic and temporal distribution of fishing opportunities for all fishermen in the Angling category, thus furthering domestic management objectives for the Atlantic tuna fisheries.

EFFECTIVE DATE: The interim final rule is effective February 21, 1997.

ADDRESSES: Comments on the interim final rule should be directed to, and copies of supporting documents, including an Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from, William Hogarth, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the authority of the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). ICCAT has established a stock recovery program for ABT and has recommended an annual scientific monitoring quota of 2,354 metric tons (mt) for nations fishing in the western Atlantic Ocean, of which the United States has been allocated 1,344.4 mt for 1997.

An initial quota of 243 mt was established for the Angling category in 1996 (61 FR 30183, June 14, 1996). NMFS estimated that nearly 60 mt of this quota was harvested in an unprecedented winter fishery off of North Carolina. The high level of landings early in the season had an unanticipated negative impact on traditional ABT fisheries in northern states and resulted in premature closures. Consequently, a number of fishery participants requested that NMFS take measures to avoid such closures in the future.

This interim final rule responds to comments received in response to an advance notice of proposed rulemaking (ANPR) (61 FR 43518, August 23, 1996). As stated in the ANPR, current regulations require the AA to monitor catch and landings statistics and close a fishery or quota category when it is projected that the quota has been attained. Another regulation enables the AA to adjust the daily catch limit in order to effect a fair allocation of fishing opportunities as the ABT migrate along the Atlantic coast. However, since the regulations do not adequately provide for geographic or temporal distribution of the entire Angling category quota, is difficult to achieve an equitable distribution of fishing opportunities to all areas.

One of the regulatory options presented in the ANPR was implementation of a June 1 opening of the Angling category fishery. Such a delay in the season opening could ensure fishing opportunities for fishermen participating in the more northern ABT fisheries. This date would coincide with the commencement of the General category season. Under the alternative, fishing for ABT from January 1 to May 31 would be allowed under the tag and release program only.

Alternatively, the ANPR noted that regulations could be amended to allow the AA, upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, and the catch rate, are preventing fishermen in an identified area from harvesting a portion of the quota, to close the Angling category and reopen it at a later date, when the bluefin have migrated to the identified area.

The ANPR established a 30-day comment period during which NMFS received numerous comments on the options presented. These comments are summarized below.

Comments and Responses

Comment: Angling category permit holders expressed concern about decreased or loss of fishing opportunities in some areas as a result of increased landings of large school, small medium, and trophy class ABT in the North Carolina winter fishery. Some commenters support NMFS having the authority to close and/or reopen all or part of the Angling category in order to ensure an equitable distribution of fishing opportunities among anglers of all geographic areas. Some commenters felt that this would be a more reasonable solution than delaying the Angling category season until June 1. Still others

suggested that since the winter fishery off North Carolina is not historical, at least at current levels, it should not be allowed to increase if it is likely to jeopardize the ABT recovery program or preclude fisheries in traditional areas.

Response: NMFS recognizes that the recent and unprecedented increase in Angling category landings of ABT in the early season North Carolina fishery has caused concern among Angling category permit holders about decreased fishing opportunities further north. This interim final rule is meant to address that concern by allowing NMFS to adjust opening and closing dates as the schools of fish move along the coast to new fishing areas, in order increase the scope of data collection and to allow a more equitable geographic and temporal distribution of fishing opportunities. NMFS believes that this expanded authority for interim closures, combined with geographic subdivisions of the quota currently under consideration, could adequately address the scientific monitoring and fishing opportunity issues without delaying the opening of the fishing season until June.

Management Measures

This interim final rule expands NMFS authority to close the ABT Angling category for reasons other than attainment of quota. Upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, or the catch rate in one area may preclude anglers in an another area from a reasonable opportunity to harvest a portion of the quota, NMFS may close all or part of the Angling category, and may reopen it at a later date, to ensure that ABT have migrated to the identified area before the entire Angling category quota is reached.

This regulatory change will improve NMFS' ability to implement ICCAT recommendations, including scientific monitoring of the stock and restricting catch to within the overall quota and the subquota for school size ABT. Additionally, this measure will further the domestic management objectives for the Atlantic tuna fisheries. This interim final rule will allow the North Carolina winter fishery for ABT to be conducted without taking such an inordinate share of any of the three size class quotas that fisheries in other areas are precluded.

Classification

This interim final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq*. The AA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

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

NMFS has determined that, under 5 U.S.C. § 553(b)(B), there is good cause to waive the requirement for prior notice and an opportunity for public comment as such procedures would be contrary to the public interest. NMFS was undertaking rulemaking on this, and other, tuna fishery management issues. Specifically, NMFS had published an ANPR on August 23, 1996 seeking public comment on a variety of tuna issues. However, while that process remains ongoing, NMFS has received information from North Carolina that up to 10 metric tons of ABT have been taken by anglers since the fishery started on January 1, 1997. While the total 1997 annual quota for the Angling category of ABT has not yet been established, the historical allocation for this category has been set at approximately 220 mt. If the North Carolina harvest rate continues, it is possible that a significant portion of the entire angling quota might be taken prior to the time that the species migrates north. As such, given the public interest in an equitable distribution of catch among fishermen in the Angling category, the need for scientific data from throughout the species' range, and the fact that NMFS has already received public comment on the subject matter of this rule, further delay in the implementation of this action to provide an opportunity for additional comment is contrary to the public interest.

Further, under 5 U.S.C. § 553(d)(3), NMFS has determined that there is good cause, as explained above, to waive the 30-day delay in effective date. If this new authority results in a closure action for the ABT fishery, NMFS has the ability to rapidly communicate the closure to fishery participants through its FAX network, HMS Information Line, and NOAA weather radio. To the extent practicable, advance notice of such closure will be provided.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: February 20, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285, is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

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

2. In § 285.20, paragraph (b)(1) is revised to read as follows:

§ 285.20 Fishing Seasons.

* * * * *

(b) *Closure*. (1)(i) NMFS will monitor catch and landing statistics, including catch and landing statistics from previous years and projections based on those statistics, of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, NMFS will project a date when the catch of Atlantic bluefin tuna will equal any quota established under this section, and will file notification with the Office of the Federal Register stating that fishing for or retaining Atlantic bluefin tuna under the quota must cease on that date at a specified hour.

(ii) Upon determining that variations in seasonal distribution, abundance, or migration patterns of ABT, or the catch rate in one area may preclude anglers in an another area from a reasonable opportunity to harvest a portion of the quota, NMFS may close all or part of the Angling category, and may reopen it at a later date if NMFS determines that ABT have migrated into an identified area. In determining the need for any such temporary or area closure, NMFS will consider the following factors:

(A) The usefulness of information obtained from catches of a particular geographic area of the fishery for biological sampling and monitoring the status of the stock;

(B) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding four years;

(C) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no allocation is made;

(D) The projected ability of the entire category to harvest the remaining amount of Atlantic bluefin tuna before the anticipated end of the fishing season.

* * * * *

[FR Doc. 97–4773 Filed 2–21–97; 4:51 pm]

BILLING CODE 3510–22–F

50 CFR Part 648

[Docket No. 961125328–7032–02; I.D. 103196B]

RIN 0648–AJ06

Fisheries of the Northeastern United States; Amendment 6 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues this rule to implement measures contained in Amendment 6 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). Amendment 6 establishes measures to prevent overfishing of the Atlantic squids and butterfish, allow for seasonal restrictions in the *Illex* squid fishery to improve yield per recruit, change the closure trigger for these species from 80 percent to 95 percent of the domestic annual harvest (DAH), and revise bycatch trip limits after closure.

EFFECTIVE DATE: March 28, 1997.

ADDRESSES: Copies of Amendment 6, the environmental assessment, regulatory impact review, and other supporting documents 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 19904–6790.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Management Specialist, 508–281–9280.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements measures in Amendment 6 to the FMP to prevent overfishing of the Atlantic squids and butterfish, allow for seasonal restrictions in the *Illex* squid fishery to improve yield per recruit, and change the closure trigger for these species from 80 percent to 95 percent of the DAH. Amendment 6 also revises the trip limits on bycatch of these species when a fishery is closed. Background concerning the development of Amendment 6 was provided in the notice of proposed rulemaking (December 9, 1996, 61 FR 64852), and is not repeated here. That notice provided a public comment period that concluded on January 21, 1997. No comments were received on the proposed rule.

Overfishing Definitions

Illex illecebrosus

Overfishing for *Illex* is defined to occur when the catch associated with a threshold fishing mortality rate (F) of F_{20} is exceeded. F_{20} is defined as the F that results in 20 percent of the maximum spawning potential (MSP) of the stock. This means that 20 percent of the maximum spawning biomass would remain in the population compared to an unfished population. For *Illex*, this overfishing definition would equate roughly to F=0.28, or an annual rate of removal of about 22 percent from the population due to fishing.

Maximum optimum yield (max OY) will also be specified as the catch that would result from F_{20}. To ensure that the overfishing F level is not closely approached, the annual quota would be specified to correspond to a target F of F_{50}. F_{50} is defined as the F that results in 50 percent of the MSP of the stock. This means that 50 percent of the spawning biomass would remain in the population compared to an unfished population. For *Illex*, this would equate roughly to F=0.11, and to an annual rate of removal of about 8 or 9 percent from the population due to fishing. Approval of Amendment 6 means that the annual specification of max OY is revised to 24,000 mt.

Loligo pealei

Overfishing for *Loligo* is defined to occur when the catch associated with a threshold F of F_{max} is exceeded. F_{max} is the F that results in the maximum yield per recruit. For *Loligo*, this overfishing threshold would equate roughly to F=0.36, and to an annual rate of removal of about 27 percent from the population due to fishing. Max OY will also be specified as the catch that would result from fishing at F_{max}. To ensure that the overfishing threshold is not closely approached, the annual quota would be specified to correspond to a target F of F_{50}. For *Loligo*, this would equate roughly to F=0.13, and to an annual rate of removal of about 1 percent from the population due to fishing. Approval of Amendment 6 means the annual specification of max OY is revised to 26,000 mt.

Atlantic Butterfish

Because current estimates of F are unreliable, Stock Assessment Workshop (SAW) 21 recommended amending the existing overfishing definition to take a more conservative (lower risk) approach. Overfishing is now defined as occurring when the 3-year moving average of pre-recruits from the Northeast Fisheries Science Center's autumn bottom trawl survey (mid-Atlantic to Georges Bank) falls within the lowest quartile of the time series, or when landings exceed a level that would result from a threshold F of F_{MSY}. Max OY is specified as the catch level that would result from fishing at F_{MSY}. Thus, when an estimate of F is available, it will be incorporated as a management tool. F_{MSY} is the F that results in the maximum sustainable yield.

Other Measures

In addition to defining overfishing, Amendment 6 specifies that, in order to prevent the DAH from being exceeded, the directed fisheries for these species will be closed when 95 percent of the DAH is projected to be taken. During the closure, any vessel of the United States can retain up to 2,500 lb (1.13 mt) of *Loligo* or butterfish and up to 5,000 lb (2.27 mt) of *Illex*.

Amendment 6 also contains a provision that will allow seasonal quotas to be specified annually for *Illex*. The FMP currently provides that seasonal quotas can be specified for *Loligo* only. This measure will provide a mechanism that could be used to delay the opening of the *Illex* season and increase yield, since the animals will be given more time to grow before they are harvested. The seasonal closure will be implemented on an annual basis through the Monitoring Committee process specified in the FMP.

Classification

NMFS has determined that this rule is consistent with the national standards, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

This final rule has been determined to be not significant for 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 of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The reasons were discussed in the proposed rule published in the Federal Register on December 9, 1996 (61 FR 64852) and are not repeated here. No comments were received regarding certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 20, 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 amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES [AMENDED]

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.20, paragraphs (b) through (d) are revised to read as follows:

§ 648.20 Maximum optimum yield (OYs).

* * * * *

(b) *Loligo*—the catch associated with a fishing mortality rate of F_{max}.

(c) *Illex* —the catch associated with a fishing mortality rate of F_{20}.

(d) Butterfish—the catch associated with a fishing mortality rate of F_{MSY}.

3. In § 648.21, paragraph (c)(5) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(c) * * *

(5) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

* * * * *

4. In § 648.22, paragraphs (a) and (c) are revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for mackerel, the Assistant Administrator shall close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. The Assistant Administrator shall close the directed fishery in the EEZ for *Loligo*, *Illex*, or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of the fishing year with incidental catches allowed as specified in paragraph (c) of this section.

* * * * *

(c) *Incidental catches.* During the closure of the directed fishery for mackerel, the trip limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for *Loligo*, *Illex*, or butterfish, the trip limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each, and the trip limit for *Illex* is 5,000 lb (2.27 mt).

[FR Doc. 97–4779 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 660

[Docket No. 961121322–7033–02; I.D. 110696B]

RIN 0648–AJ02

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fishery; Mau Zone Moratorium

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to impose a 2-year moratorium on issuing new permits for harvesting bottomfish in the Mau Zone of the Northwestern Hawaiian Islands so that effort in the fishery will be stabilized while the Western Pacific Fishery Management Council (Council) develops a limited access program for the area. This will stabilize effort in the fishery while the Council develops a management system for the Mau Zone that may limit access to the fishery.

EFFECTIVE DATE: March 27, 1997.

ADDRESSES: Send comments to Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the Environmental Assessment can be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Katekaru, NMFS, (808) 973–2985; Mr. Svein Fougner, NMFS, (562) 980–4034; or Ms. Kitty Simonds, Council, (808) 522–8220.

SUPPLEMENTARY INFORMATION: Following extensive review by the Council's advisory bodies, the details of which were summarized in the proposed rule (61 FR 60255, November 27, 1996) and will not be repeated here, the Council, at its 90th meeting, August 7–9, 1996, recommended that a moratorium be implemented for 2 years to allow sufficient time to complete an access limitation program for the Mau Zone bottomfish fishery. The Council recommended this action in accordance with the framework procedures of 50 CFR 660.67(d), which specifically addresses the access limitation process. During the moratorium, the Council will develop a program for the Mau Zone that aims to reduce the potential increase in fishing pressure in the Mau Zone and increase the economic efficiency of the fishery.

Discussions among the members of the Council's Bottomfish Plan Team, Task Force, Advisory Panel, and Review Board have pointed out the necessity of three elements in any limited access plan: Simplicity, equity, and the importance of restricting the number of potential participants. Approximately 80 vessels have had permits for the Mau Zone at some time in the past; however, some owners of vessels have died, and some vessels have permanently left the fishery, leaving a core of perhaps 30 vessels, whose owners could renew their permits and participate in the fishery. Any plan that the Council adopts is likely to contain some kind of qualifying criteria. A permit obtained by a former permittee during the moratorium may not guarantee a permit under the permanent limited access system. The Council is considering using qualification criteria based on historical landings data and current landings data, coupled with non-transferable permits for reducing the number of bottomfish vessels in the fishery and maintaining an active fleet at an optimal level.

Upon the effective date of this rule, only those vessel owners who have held Mau Zone permits will be eligible to renew or obtain permits for the length of the moratorium.

Classification

The Administrator, Southwest Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the bottomfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published on November 27, 1996 (61 FR 60255). No public comments were received on the certification. As a result, no final regulatory flexibility analysis has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 21, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reason set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST AND WESTERN PACIFIC STATES

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.61, paragraph (a) is revised to read as follows:

§ 660.61 Permits.

(a) The owner of any vessel used to fish for bottomfish in the Mau Zone must have a permit issued under this section for that vessel. Permits for persons not previously permitted to fish in the Mau Zone will not be issued for a 2-year period beginning March 27, 1997.

* * * * *

[FR Doc. 97–4778 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 022097B]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; District 16 of Registration Area D

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

ACTION: Closure.

SUMMARY: NMFS is closing the scallop fishery in District 16 of Scallop Registration Area D (Yakutat). This action is necessary to prevent exceeding the scallop 1997 total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), February 23, 1997, until 2400 hrs, A.l.t., June 30, 1997.

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

SUPPLEMENTARY INFORMATION: The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP), which was prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at subpart F of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.62(b), the 1997 scallop TAC for District 16 of Scallop Registration Area D (Yakutat), was established by the Final 1996–97 Harvest Specifications of Scallops (61 FR 38099, July 23, 1996) as 35,000 lb (15,880 kg) shucked meat.

In accordance with 679.62(c), the Administrator, Alaska Region, NMFS, has determined that the scallop TAC for District 16 of Scallop Registration Area D (Yakutat), has been reached. Consequently, NMFS is prohibiting the taking and retention of scallops in District 16 of Scallop Registration Area D (Yakutat).

Classification

This action is required by § 679.62 and is exempt from review under E.O. 12866.

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

Dated: February 20, 1997.

Richard W. Surdi,

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

[FR Doc. 97–4774 Filed 2–21–97; 4:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 38
Wednesday, February 26, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–97–001]

Pork Promotion, Research, and Consumer Information Order—Increase in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would increase by eight-hundredths of a cent per pound the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1996 five-market average price for domestic barrows and gilts. This proposed action would bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These proposed changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

DATES: Comments must be received by March 28, 1997.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, STOP 0251; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2606 South Building; 14th and Independence Avenue, SW.; Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the Federal Register (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 200 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.601). This proposed rule would increase the amount of assessments on imported pork and pork products subject to assessment by eight-hundredths of a cent per pound, or as expressed in cents per kilogram, nineteen-hundredths of a cent per kilogram. This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 1996. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of $310,000 over a 12-month period. Assessments collected for 1996 were $2,804,935. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the Federal Register (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, and 60 FR 29963) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would increase the assessments on all of the imported pork and pork products subject to assessment as published in the Federal Register as a final rule June 7, 1995, and effective

on September 3, 1995; (60 FR 29965). This increase is consistent with the increase in the annual average price of domestic barrows and gilts for calendar year 1996 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This increase in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.45 percent of the market value.

The methodology for determining the per pound amounts for imported pork and pork products was described in the Supplementary Information accompanying the Order and published in the September 5, 1986, Federal Register at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the Department's Statistical Bulletin No. 697 ''Conversion Factors and Weights and Measures.'' These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in LGMN Branch's publication ''Livestock, Meat, and Wool Weekly Summary and Statistics.'' Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent per pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price increased from $41.99 in 1995 to $52.77 in 1996, an increase of about 25 percent. This increase would result in a corresponding increase in assessments for all HTS numbers listed in the table in § 1230.110, 60 FR 29965; June 7, 1995, of an amount equal to eight-hundredths of a cent per pound, or as expressed in cents per kilogram, nineteen-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1995, through September 30, 1995, the proposed increase in assessment amounts would result in an estimated $310,000 increase in assessments over a 12-month period.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. In Subpart B—Rules and Regulations, § 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000 ...	0.45 percent Customs Entered Value.
0103.91.0000 ...	0.45 percent Customs Entered Value.
0103.92.0000 ...	0.45 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000	.34	.749564
0203.12.1010	.34	.749564
0203.12.1020	.34	.749564
0203.12.9010	.34	.749564
0203.12.9020	.34	.749564
0203.19.2010	.39	.859794
0203.19.2090	.39	.859794
0203.19.4010	.34	.749564
0203.19.4090	.34	.749564
0203.21.0000	.34	.749564
0203.22.1000	.34	.749564
0203.22.9000	.34	.749564
0203.29.2000	.39	.859794
0203.29.4000	.34	.749564
0206.30.0000	.34	.749564
0206.41.0000	.34	.749564
0206.49.0000	.34	.749564
0210.11.0010	.34	.749564
0210.11.0020	.34	.749564
0210.12.0020	.34	.749564
0210.12.0040	.34	.749564
0210.19.0010	.39	.859794
0210.19.0090	.39	.859794
1601.00.2010	.47	1.036162
1601.00.2090	.47	1.036162
1602.41.2020	.51	1.124346
1602.41.2040	.51	1.124346
1602.41.9000	.34	.749564
1602.42.2020	.51	1.124346
1602.42.2040	.51	1.124346
1602.42.4000	.34	.749564
1602.49.2000	.47	1.036162
1602.49.4000	.39	.859794

Dated: February 20, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–4772 Filed 2–25–97; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Programs

AGENCY: Small Business Administration.

ACTION: Proposed Rule.

SUMMARY: The U. S. Small Business Administration (SBA) is proposing to modify its rules regarding the financing and securitization of the unguaranteed portion of loans guaranteed under Section 7(a) of the Small Business Act. Present regulations provide these options only to non-depository lenders. (13 CFR 120.420, Revised as of March 1, 1996) These proposed rules would permit both depository and non-depository lenders to pledge or securitize the unguaranteed portions of SBA guaranteed loans.

DATES: Comments must be received March 28, 1997.

ADDRESSES: Comments may be mailed to Jane Palsgrove Butler, Acting Associate

Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, Room 8200.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Acting Deputy Associate Administrator for Financial Assistance, (202) 205–7505.

SUPPLEMENTARY INFORMATION: Over the past several years, the average SBA guaranty under its guaranteed business loan program (program) has decreased from nearly 90% to approximately 75%. This 150% increase in lender exposure requires lenders participating in the program to commit substantially more of their own capital in order to support their dollar volume of SBA guaranteed loans. In 1992, SBA promulgated regulations that permitted non-depository lenders participating in the program to pledge or securitize the unguaranteed portions of SBA guaranteed loans, thereby permitting them to fund unguaranteed portions of SBA guaranteed loans with the proceeds of loans and securities offerings. (See 13 CFR § 120.420, revised as of March 1, 1996.)

Since that time, bank (depository) participants have asked SBA to modify its regulations to provide the same ability to them, in order to offset the increase in commitment of capital needed to continue participation in the program. Bankers have told SBA that, in many cases, it is more efficient to raise funds through a pledge or securitization than to attract additional deposits. Congress has now recognized the need to permit all participants in the program to have a level playing field in raising capital needed to fund the increased requirement for unguaranteed portions. Therefore, recent legislation prohibits any securitization under SBA's present regulations after March 31, 1997, unless SBA develops regulations permitting all participating lenders to pledge and securitize the unguaranteed portions of their SBA guaranteed loans. See section 103(e) of Public Law 104–408, Oct. 1, 1996, which directs SBA to promulgate a final regulation ''that applies uniformly to both depository institutions and other lenders * * * setting forth the terms and maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.''

I. Advance Notice of Proposed Rulemaking

On November 29, 1996, SBA published an advance notice of proposed rulemaking which requested the views of interested parties on how this statutory requirement might be satisfied. 61 FR 60,649, Nov. 29, 1996.

SBA received nine responses, including one response which had four signatories. The comments corresponded to questions posed in the Advance Notice Proposed Rulemaking. The following is a discussion of the comments received.

Item one—How should lenders demonstrate a retained tangible economic interest in a guaranteed loan? Should lenders be required to retain an unguaranteed portion and/or a reserve? What level of retention and/or reserve is adequate to protect the interest of SBA?

Each of the respondents provided comments on this item. One suggested a 10% retention, one suggested a retention of 50% of the unguaranteed portion of the loan and five suggested a retention of 5% of the total amount of the loan. One respondent offered to work with the Agency to develop a retention level appropriate to the credits and one respondent proposed that a lender provide risk retention or supply a credit enhancement of the lesser of (1) the level required to cause all securities issued under the securitization transaction to third parties to receive an investment grade rating, or (2) 5% of the total outstanding principal of the loans which unguaranteed portion are securitized.

Item two—Should we permit financing transactions on a periodic scheduled basis or should lenders be permitted to submit transactions whenever they want?

All of the respondents who commented on this item suggested that there should not be a set schedule and that issuers should decide when to take an issue to market.

Item three—Should we permit multiple lenders to ''pool'' transactions in one multi-party transaction? If so, how should this be regulated?

Of the respondents who commented on this item, six were in favor and one was against. Those in favor stated that pooling will be necessary to make securitization available to small volume lenders. The respondent opposing this idea suggested that multi-issuer pools would allow lenders with poorer quality loans to spread their risk over a larger number of loans.

Item four—Should we use third party resources to help process the contemplated transactions? If so, what type of third parties? Who should bear the costs associated with using third parties?

Only one respondent was against using third parties. This respondent wants to keep the process as simple as possible and feels that adding third parties will complicate the process. All others did not object to using third parties as long as the fee for their services was reasonable.

II. Background

In developing these proposed regulations, SBA attempted to balance the needs of financial institutions, especially non-depository financial institutions, to raise funds for operations with the mandate that the program be operated on a safe and sound basis to protect the interests of the taxpayers.

SBA has deliberated extensively over the issue of requiring a retained economic interest in the loans. The Agency continues to believe that the risk of loss to the originating lender has been the cornerstone of the 7(a) loan program. For example, the Agency has previously taken steps to reduce the premium received by lenders upon the sale of the guaranteed portion of a loan when the Agency thought that premiums had reached the level at which they may be reducing the economic interest in the loans to the point that lenders would not be cautious providers of credit.

In determining the proposed regulatory structure, the Agency also tried to balance the ability of lenders to pledge the future income on the loan with the need to maintain a level of safety for lenders. The securitization structures used to date attempt to put the entire risk of loss on the lender. In reviewing these structures, the Agency has become concerned that there may not be a sufficient reserve available for the entity to survive a modest increase in the historic loss rate. One must remember that rating agencies involved in these transactions are rating the security and the cash flows associated with it. They are not making any type of determination as to whether the originator will survive for the duration of the securitization.

Absent a securitization, a lender will have a guaranty on 75% of a loan and have a 25% risk. If the unguaranteed portion of loans are securitized, underwriters will require that the securitization be structured so that investors are virtually protected from any loss. To do this, securitizing lenders have had to pledge all of the cash flow on the unguaranteed portion and a part of the cash flow on the guaranteed portion that would otherwise be received by the lender. Because the securitization does not change the risk of default on loans, a lender is left in the position of assuming, in this example, the entire risk associated with the 25% unguaranteed portion, but not having

the assets associated with that portion of the loan to offset its securitization.

SBA has proposed regulations with these concerns in mind. Clearly, it is not in SBA's interest to eliminate an avenue of funding used by some of its lenders. Therefore, the Agency will review any final regulations after a reasonable period of use and consider whether changes are necessary based on experience with the structure that is permitted.

III. Proposed Regulations

After having carefully considered all of these matters and the responses to the advance notice, SBA is now proposing the following regulations to satisfy the statutory requirement. The regulations being proposed extend the coverage of the 1992 regulations to depository lenders and propose a few changes in those regulations.

A. Technical Change

When SBA first considered securitization and pledging regulations in 1992, it was confident that it had the resources to take over the portfolio of a securitizing lender if the lender failed or defaulted on its obligations under a securitization agreement. Since the promulgation of those regulations, SBA has greatly decreased its staff. The reduction of personnel has reduced SBA's ability to absorb servicing and liquidation responsibilities for a large portfolio of loans in the case of failure or default by a participating lender which has securitized its unguaranteed portions. Therefore, as a condition to the approval of any securitization of unguaranteed portions under the 1992 regulations, the Agency has required in securitization documentation that a lender qualified to participate in the program, and acceptable to SBA, identified as a back up servicer, will take over the responsibilities required by SBA Form 750, ''Guaranty Loan Agreement,'' for servicing and liquidation of loans made by a failed participant. The proposed regulations incorporate this requirement. Such servicing and liquidation must be performed under the terms of SBA's Blanket Guaranty Agreement.

B. Extent of Securitization

SBA has had over three years to review the use of securitization by non-depository participants. The Agency has decided that less than 100% securitization of unguaranteed portions by lenders participating in the program will provide them with enough capital to support adequate levels of SBA guaranteed lending. Therefore, SBA is proposing to modify its present regulations to require that participating lenders which undertake securitizations retain the equivalent of at least a 5% interest in each loan the unguaranteed portion of which is securitized.

In this regard, the proposed regulations are intended to provide a level playing field for both depository and non-depository lenders to securitize assets and ensure the safety and soundness of the program. SBA intends to require that any securitizing lender demonstrate its continuing economic interest in the securitized loans by one of the following: (1) Retaining in its own portfolio unguaranteed portions equal to 5% of the face value of all loans (guaranteed plus unguaranteed portions) the unguaranteed portions of which are contained in the securitization, (2) retaining a subordinate tranche equal to 5% of the face value of all the loans the unguaranteed portions of which are contained in the securitization, or (3) establishing a cash reserve equal to 5% of the total face value of all of the loans the unguaranteed portions of which are contained in the securitization. Under any of the options, only the participating lender may regain use of the proportional retained amount of funds after each corresponding loan has been paid in full, or, in the case of a default, after the collateral for the loan has been liquidated and a determination has been made that there is no additional collectability.

If option (1) is used, the retained amount may be pledged as collateral for a loan to fund the retainage. If option (3) is used, the lender must establish the cash reserve at the time of the securitization. The retainage in the case of option (3) must be held by a custodian acceptable to SBA. In the event of a failure by the securitizing lender, it must become available first to SBA to offset expenses relative to servicing or liquidating the loans, and secondly, to a subsequent servicer to be available for the same purposes.

C. Pledging

The 1992 regulations provided a method for non-depository lenders to pledge the guaranteed and unguaranteed portions of their loans as a means of financing the loans. The proposed regulations will extend the same option to depository lenders. However under this regulation, all lenders using a pledge agreement will be required to retain a cash flow equal to 1% of the principal balance of any loan pledged if the percentage of the loan pledged exceeds the unguaranteed percentage of the loan. Thus, if a lender is pledging 100% of a portfolio of loans, it must retain a cash flow equal to 1% of the principal balance of each loan pledged. The documentation for the pledge must indicate that the purpose of this holdback is to provide a sufficient reserve to pay the cost of a new participating lender to take over servicing of pledged loans in the event of the failure of the originating lender or its default under the pledge agreement.

D. Capital Requirements

Presently under SBA's regulations, Small Business Lending Companies (SBLCs), a subset of non-depository lenders, must maintain a minimum private capital of $1,000,000 or 10% of the unguaranteed portions of SBA guaranteed loans, whichever is more. (13 CFR 120.453) SBA is proposing to continue the minimum capital requirement for SBLCs. However, it is also proposing that SBLCs which securitize unguaranteed portions and choose the option under these regulations either to retain a percentage of the loans or a tranche of the securities must increase their private capital by 8% of the unguaranteed portions retained or of the tranche retained. This additional capital requirement will put depository lenders and non-depository SBLC lenders in an equivalent capital position with respect to SBA loans in which all or a part of their unguaranteed portions are securitized. Thus, under this proposal, an SBLC lender which retains a 5% tranche in a securitization, or retains unguaranteed portions equal to 5% of the face amount of the loans the unguaranteed portions of which are securitized must increase its private capital by an amount equal to 8% of the retained tranche. If the SBLC lender puts up a 5% cash reserve, the increase in capital will not be necessary.

E. Custodial Agent

SBA is proposing that physical custody of the pertinent loan documents relevant to pledging and securitizations be retained by the SBA's fiscal and transfer agent (FTA) for the Section 7(a) loan program, acting as custodian for the SBA and the parties to the transaction. Although SBA has approved securitizations using other entities as the custodian of the loan documents, the Agency is concerned that increased securitization activity could make it difficult for SBA to locate a particular borrower's note and collateral documents if multiple custodians are permitted. Therefore, SBA is proposing that the FTA handle this responsibility for all pledgings and securitizations. The FTA already performs this service for several existing transactions, and this requirement is not expected to have a negative effect on the

ability of any lender to pledge or securitize unguaranteed portions of loans.

Under the proposed regulations lenders which securitize will continue to be bound by any other regulations and requirements that otherwise apply to lenders making SBA loans. Thus, for example, should a denial of liability on a guaranty or suit against a lender become necessary, SBA will hold the lender or subsequent servicer, if appropriate, responsible. The fact that unguaranteed portions of SBA guaranteed loans have been sold to a trust for the purpose of a securitization will not negate the requirements of SBA Form 750, ''Blanket Loan Guaranty Agreement,'' and SBA's regulations which require the prudent servicing of SBA loans.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

SBA certifies that this proposed rule does constitute a significant rule within the meaning of Executive Order 12866 but would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. We believe this rule is likely to have an annual economic effect of $100 million or more, but we request comment from the public on its perception of the costs and benefits associated with this rule to enable SBA to prepare a cost benefit analysis in conjunction with the final rule. It will not result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

The proposed rule is consistent with the mandate of section 103(e) of Public Law 104–208 which is to set forth terms and conditions under which sales for the purpose of securitization can be permitted, including the maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program. We believe that the reserve requirements and other safeguards built into the proposed regulations satisfy this concern. For the reasons set forth above, we feel that the proposed regulations have the benefit of permitting SBA's lenders to support an increased volume of SBA lending without the outlay of the cost of unguaranteed portions. There are reasonable alternatives involving retention of less or no reserve requirement, but we do not believe that they are as likely to uphold the safety and soundness of the program as are the proposed regulations. Finally, the proposed regulations have no negative impact on State, local, or tribal governments.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 120

Business loans.

For the reasons set forth above, SBA proposes to amend Part 120 of title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOANS

1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Section 120.420 is revised to read as follows:

§ 120.420 Financings by participating lenders.

(a) A participating lender may pledge the notes evidencing SBA guaranteed loans or sell interests in such notes representing the unguaranteed portions of such loans if SBA, in its sole discretion, gives its prior written consent. In order to obtain that consent, the lender must be secure financially and have a history of compliance with SBA's regulations and any other applicable state or Federal statutory and regulatory requirements, and agree to the terms of these regulations.

(b) A participating lender, SBA, and any third party involved in a pledging or securitization transaction must enter into a written agreement satisfactory to SBA in its sole discretion which acknowledges SBA's interest as guarantor of the subject loans and in which all relevant third parties agree to recognize and uphold those interests under the Act, this part, and the contractual provisions of SBA's Loan Guarantee Agreement. In any such agreement, the parties must agree to the following conditions:

(1) Except in extremely unusual circumstances as determined by SBA in its sole discretion, the fiscal and transfer agent for SBA will hold all pertinent loan instruments as designated by SBA, and the lender will continue to service the loans after the pledge or transfer is made.

(2) It must be demonstrated to SBA's satisfaction that the lender retains an economic risk in and bears the ultimate risk of loss on the unguaranteed portions. In the case of a pledge of notes, the lender must retain all of the economic interest in the unguaranteed portion of any loan which a pledged note evidences. In the case of a sale of unguaranteed portions of SBA guaranteed loans to support a securitization, the lender must agree to either hold unguaranteed portions equal to 5% of the total amount of the loans the remaining unguaranteed portions of which are contained in the securitization, or purchase or retain a subordinate tranche of the securitization equal to 5% of the total principal outstanding of the loans the unguaranteed portions of which are contained in the securitization, or establish a cash reserve of 5% of the face amount of the loans the unguaranteed portions of which are contained in the securitization. Any cash reserve retainage must be held in a bankruptcy remote environment, and in the event of a default by the lender under the securitization agreement shall become the property of SBA to be used first to cover SBA expenses and losses, and secondly for payment of servicing and liquidating expenses for the loans the unguaranteed portions of which are contained the securitization. Any retainage covered in this paragraph shall be proportionately decreased by the payment in full of each correspondent loan or when the collateral for each correspondent loan has been fully liquidated and a determination has been made that there is no additional collectability.

(c) A lender which pledges notes must retain an income stream equal to 1% of the face amount of any notes pledged if the percentage of the corresponding loan pledged exceeds the unguaranteed percentage. The fund must become the property of SBA in the event of a default by the lender under the pledging agreement to be used first to cover SBA expenses and losses, and secondly for payment to a backup servicer of servicing and liquidating expenses for the loans pledged.

(d) Other than for the pledging against Treasury Loans and Tax Accounts, a lender may not use SBA guaranteed loans or the collateral supporting such loans as collateral for any borrowing not related to financing of the guaranteed or unguaranteed portion of SBA loans.

(e) Any pledge or securitization agreement must identify a successor servicer to the pledging or securitizing

lender, agreeable to SBA which will be responsible for servicing and liquidating loans in the case of default under the agreement by the lender. A lender, or any successor servicer under a pledge or securitization agreement, will be considered the lender of the loan pledged or securitized under SBA rules, and will be bound by all restrictions that otherwise apply to lenders making SBA loans as long as either continues to act as servicer. SBA will hold the lender or successor servicer responsible in the case of a denial of liability or other adjustment to the amount of any SBA guaranty.

§ 120.470 [Amended]

3. Section 120.470(b)(3) is amended by adding the following sentence at the end thereof:

* * * * *

(b) * * *

If pursuant to Section 420 of these regulations an SBLC sells the unguaranteed portion of loans and retains either an amount of unguaranteed portions equal to 5% of the total amount of the loans the unguaranteed portions of which are contained in securitization, or a subordinate tranche of a securitization equal to 5% of the face value of the loans the unguaranteed portions of which are contained in the securitization, it must increase its private capital by 8% of either the face value of the unguaranteed portions of the loans retained or 8% of the face value of the subordinate tranche.

Dated: February 12, 1997.

Ginger Ehn Lew,

Acting Administrator.

[FR Doc. 97–4785 Filed 2–25–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –15, and –30 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –15, and –30 series airplanes, and C–9 (military) airplanes. This proposal would require a one-time visual inspection to determine if all corners of the upper cargo doorjamb have been previously modified, various follow-on repetitive inspections, and modification, if necessary. This proposal is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners of the upper cargo doorjamb. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–272–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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–272–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–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin and doubler at the corners of the upper cargo doorjamb on Model DC–9 series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Structural Inspection Document (SSID) program, required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue cracking in the fuselage skin or doubler at the corners of the upper cargo doorjamb, if not detected and corrected in a timely manner, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996. The service bulletin describes the following procedures:

1. For airplanes on which the modification specified in Service Bulletin DC9–53–276 has not been accomplished: Performing x-ray inspections to detect cracks of the fuselage skin and doubler at all corners of the upper cargo doorjamb;

2. Conducting repetitive inspections, or modifying the corner skin of the upper cargo doorjamb and performing follow-on action eddy current inspections, if no cracking is detected;

3. Performing repetitive eddy current inspections to detect cracks on the skin adjacent to any corner that has been modified; and

4. Modifying any crack that is found to be 2 inches or less in length at all corners that have not been modified and performing follow-on repetitive eddy current inspections.

Accomplishment of the modification will minimize the possibility of cracks in the fuselage skin and doubler.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to determine if all corners of the upper cargo doorjamb have been previously modified, various follow-on repetitive inspections, and modification, if necessary. The follow-on repetitive inspections would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposed Rule and the Relevant Service Information

The referenced service bulletin recommends performing an initial x-ray inspection in the fuselage skin and doubler at all corners of the upper cargo doorjamb. However, the FAA is unaware of the existence of an adequate x-ray inspection method for inspecting corners that have been modified. Therefore, for cases where the corners of the upper cargo doorjamb have been modified, the proposed AD would require an eddy current inspection to detect cracks on skin adjacent to the modification. For cases where the corners of the upper cargo doorjamb have not been modified, the proposed AD would require an x-ray inspection, as described previously. Since these inspections are dependent on whether the corners have been modified or not, the FAA finds that an initial one-time visual inspection is necessary to make such a determination.

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Cost Impact

There are approximately 93 McDonnell Douglas Model DC–9–10, –15, and –30 series airplanes, and C–9 (military) airplanes, of the affected design in the worldwide fleet. The FAA estimates that 80 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed one-time visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the one-time visual inspection proposed by this AD on U.S. operators is estimated to be $4,800, or $60 per airplane, per inspection cycle.

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.

Should an operator be required to accomplish the necessary x-ray inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary x-ray inspection action is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the necessary eddy current inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary eddy current inspection action is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the necessary modification, it would take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts could range from $714 per airplane to as much as $1,526 per airplane. Based on these figures, the cost impact of any necessary modification action is estimated to be between $1,554 and $2,366 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 96–NM–272–AD.

Applicability: Model DC–9–10, –15, and –30 series airplanes, and C–9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the upper cargo doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words ''repair'' and ''modify/modification'' in this AD and the referenced service bulletin are used interchangeably.

Note 4: This AD will affect Principal Structural Element (PSE) 53.09.023 of the DC–9 Supplemental Inspection Document (SID).

(a) Prior to the accumulation of 41,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the upper cargo doorjamb have been modified prior to the effective date of this AD.

(b) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the upper cargo doorjamb have not been modified, prior to further flight, perform an x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the upper cargo doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996.

(1) If no crack is detected during the x-ray inspection required by this paragraph, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996.

(i) *Option 1.* Repeat the x-ray inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 3,000 landings; or

(ii) *Option 2.* Prior to further flight, modify the corner skin of the upper cargo doorjamb, in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an eddy current inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during the eddy current inspection required by this paragraph, repeat the eddy current inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any eddy current inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any crack is found during any x-ray inspection required by this paragraph and the crack is 2 inches or less in length: Prior to further flight, modify/repair it in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an eddy current inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the eddy current inspection required by this paragraph, repeat the eddy current inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during any eddy current inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) If any crack is found during any x-ray inspection required by this paragraph and the crack is greater than 2 inches in length: Prior to further flight, modification it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the upper cargo doorjamb have been modified previously: Prior to the accumulation of 28,000 landings after accomplishment of that modification, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–276, dated September 30, 1996.

(1) If no crack is detected during the eddy current inspection required by this paragraph, repeat the eddy current inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected during any eddy current inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4714 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH 125–1A and –3A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model DH 125–1A and –3A series airplanes. This proposal would require repetitive eddy current inspections to detect fatigue cracking of the main entry door/frame pressing, and repair, if necessary. This proposal is prompted by reports of fatigue cracking of the main entry door/frame pressing due to cyclic loading of the door frame. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could lead to the loss of structural integrity of the main entry door, and, consequently, result in decompression of the cabin.

DATES: Comments must be received by April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–196–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 Raytheon Aircraft Company, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

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–196–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–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of fatigue cracking of the main entry door/frame pressing of Raytheon Model DH 125–1A and –3A series airplanes. Investigation revealed that cyclic loading of the door frame caused the fatigue cracking. Such fatigue cracking, if not detected and corrected in a timely manner, could cause the loss of structural integrity of the main entry door, and lead to decompression of the cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB.52–48, dated June 19, 1996, which describes procedures for eddy current inspections to detect fatigue cracking of the main entry door/frame pressing. The service bulletin also describes procedures for repair, if necessary.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive eddy current inspections to detect and correct fatigue cracking of the main entry door/frame pressing. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 143 Raytheon Model DH 125 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 56 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,360, or $60 per airplane, per inspection.

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.

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:

Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al.): Docket 96–NM–196–AD.

Applicability: Model DH 125–1A and –3A series airplanes; equipped with a main entry door having part numbers 25FC3559A, 25FC3559A/B, or 25FC3559A/C; and on which Raytheon Modification 251429 has not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the main entry door frame pressing area, which could result in loss of structural integrity of the door and consequent decompression of the cabin, accomplish the following:

(a) Within the next 150 landings or 90 days after the effective date of this AD, whichever occurs earlier, perform an eddy current inspection to detect fatigue cracking of the main entry door/frame pressing, in accordance with Raytheon Aircraft Service Bulletin SB.52–48, dated June 19, 1996.

(1) If no cracking is detected during the inspection, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) If any cracking is detected during the inspection, prior to further flight, repair the cracking in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

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

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4716 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–210–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Model MU–300 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 Mitsubishi Model MU–300 airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to provide pilots with certain operating procedures during icing conditions, and to limit the maximum flaps position for flight in icing conditions or landing after an icing encounter. The proposal also would require installing an ice detector, and accomplishing a corresponding AFM revision to address its operation. For certain airplanes, the proposal would require converting the airplane configuration or modifying the warning horn system of the landing gear; and revising the AFM to specify flaps 10 degrees as a normal landing flap configuration. The actions specified by the proposed AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

DATES: Comments must be received by April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–210–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 Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, Suite 685, LB–77, Dallas, Texas 75248. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Tina L. Miller, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

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–210–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–210–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 5, 1994, the FAA issued AD 94–25–10, amendment 39–9094 (59 FR 64112, December 13, 1994), that is applicable to all Raytheon (Beech) Model 400, 400A, 400T, and MU–300–10 airplanes, and all Mitsubishi Model MU–300 airplanes, to require a revision to the FAA-approved Airplane Flight Manual (AFM) to provide pilots with special operating procedures during icing conditions. That AD was prompted by results of icing tests, which demonstrated that ice accumulations on the horizontal stabilizer may cause the airplane to pitch down at certain flaps settings. The requirements of that AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94–25–10, the FAA reviewed and approved Mitsubishi MU–300 Service Bulletin No. 30–007 (including Attachment 1), dated January 12, 1996. The service bulletin describes procedures for installing a Rosemount ice detector in accordance with Supplemental Type Certificate (STC) ST00383WI.

For Diamond I airplanes, Attachment 1 of the service bulletin describes procedures for modifying the warning horn system of the landing gear. That action involves modifying the center pedestal and the wiring of the warning horn, installing a switch panel assembly on the center pedestal, and performing a functional test of the warning horn system of the landing gear.

As an alternative to this modification, the service bulletin specifies that Diamond I airplanes may be converted to the Diamond IA airplane configuration by accomplishing Mitsubishi MU–300 Diamond Service Recommendation SR–001, Revision 2, dated June 1, 1984. That action involves upgrading the airplane to conform to an improved performance configuration, and includes modifications of the air conditioning system, the pitch trim indicator, the warning horn of the landing gear, and the engine indicating system.

Mitsubishi MU–300 Service Bulletin No. 30–007 also references the following documents as the additional sources of service information for accomplishment of certain other procedures:

1. Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, which revises the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the AFM to address the operation of the ice detector system.

2. Diamond I Flight Manual, Revision 29, dated January 5, 1996, which revises the

Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, to allow landing flaps of 30 degrees if the icing encounter meets certain criteria, and to specify flaps 10 degrees as a normal landing flap configuration for Diamond I airplanes.

3. Mitsubishi MU–300 Diamond IA Airplane Flight Manual, Revision 9, dated January 5, 1996, which revises the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, and Performance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, and to allow landing flaps of 30 degrees if the icing encounter meets certain criteria.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, for Model MU–300 airplanes, the proposed AD would continue to require the AFM revision, currently required by AD, that provides pilots with certain operating procedures during icing conditions, and limits the maximum flaps position for flight in icing conditions or landing after an icing encounter. This proposal also would require installing an ice detector, and accomplishing a corresponding AFM revision to address its operation.

For certain airplanes, the proposal would require converting the airplane configuration or modifying the warning horn system of the landing gear; and revising the AFM to specify flaps 10 degrees as a normal landing flap configuration.

The proposed actions would be required to be accomplished in accordance with the service documents described previously.

Accomplishment of the requirements of the proposed AD would constitute terminating action for the requirements of AD 94–25–10 for Model MU–300 airplanes.

Other Relevant Rulemaking

The FAA is considering issuing separate rulemaking action to supersede AD 94–25–10 to remove Model MU–300 airplanes from the applicability of the AD. That separate rulemaking action also would require, among other things, modification of the ice protection system of the horizontal stabilizer on all Beech Model 400, 400A, 400T, and MU–300–10 airplanes.

Difference Between Service Bulletin and the Proposed AD

Operators should note that Mitsubishi MU–300 Service Bulletin No. 30–007 recommends a compliance time of one year after the date of issuance of the service bulletin. However, this proposed AD requires that the actions specified in the service bulletin be accomplished within two years after the effective date of the AD. The FAA established the proposed two-year compliance time to coincide with the time specified in the separate rulemaking action to supersede AD 94–25–10 for Beech Model 400, 400A, 400T, and MU–300–10 airplanes, discussed previously. The FAA has determined that the proposed 2-year compliance time will not compromise safety, since the currently-required AFM revision will remain in effect in the interim.

Cost Impact

The FAA estimates that 89 Model MU–300 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revision that is currently required by AD 94–25–10 for Model MU–300 airplanes takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the currently required AFM revision is estimated to be $5,340, or $60 per airplane.

The ice detector installation that is proposed in this AD action for all airplanes would take approximately 80 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $7,000 per airplane. Based on these figures, the cost impact on U.S. operators of the proposed installation of this AD is estimated to be $1,050,200, or $11,800 per airplane.

The new AFM revisions that are proposed in this AD action for all airplanes would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the new AFM revisions is estimated to be $5,340, or $60 per airplane.

The conversion of the configuration of the airplane that is specified in this AD action as an option for Diamond I airplanes, if accomplished, requires actions related to the airframe and the engine. The airframe portion of the conversion would take approximately 160 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $50,000 per airplane. The engine portion of the conversion should be accomplished during a regular engine overhaul; therefore, it would require no additional work hours. Required parts for this action would cost approximately $260,000 per airplane. Based on these figures, the cost impact of the proposed conversion on U.S. operators, who elect to accomplish it, is estimated to be $319,600 per airplane.

If accomplished, the option for modification of the warning horn system that is specified in this AD action for Diamond I airplanes would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $600 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $960 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Mitsubishi Heavy Industries, LTD.: Docket 96–NM–210–AD.

Applicability: All Model MU–300 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose-down pitch at certain flap settings during icing conditions, accomplish the following:

(a) For all airplanes: Within 20 days after December 28, 1994 (the effective date of AD 94–25–10, amendment 39–9094), revise the Limitations Section and Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Icing Conditions

If icing conditions are encountered during flight, no greater than 10 degrees flaps may be utilized for landing unless the following conditions are met:

1. The icing conditions were encountered for less than 10 minutes, and the Ram Air Temperature (RAT) during such encounter was warmer than –8 degrees C. or

2. A RAT of +5 degrees C or warmer is observed during approach and landing.

If either of the above two conditions are met, 30 degrees flaps may be utilized for landing.

Otherwise:

Flaps (landing flaps setting)—10 degrees
Land Select (LAND SEL) Switch—Flaps 10 degrees

Use landing data for 10 degrees flaps from Appendix 1 of this AD.

Use landing data for 10 degrees flaps from Section 6, Performance.

(b) For Diamond I airplanes, as identified in Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996: Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) through (b)(4) of this AD:

(1) Install an ice detector in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(2) Revise the Introduction, Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the FAA-approved AFM to address the operation of the ice detector system. This may be accomplished by inserting a copy of Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, in the AFM.

(3) Accomplish either paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Convert the airplane from the Diamond I configuration to the Diamond IA configuration in accordance with Mitsubishi MU–300 Diamond Service Recommendation SR 71–001, Revision 2, dated June 1, 1984; and accomplish the AFM revision required by paragraph (c)(3) of this AD, or

(ii) Modify the warning horn system of the landing gear in accordance with Attachment 1 of Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(4) Revise the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, to allow landing flaps of 30 degrees if the icing encounter meets certain criteria, and to specify flaps 10 degrees as a normal landing flap configuration. This may be accomplished by inserting a copy of Diamond I Flight Manual, Revision 29, dated January 5, 1996, in the AFM.

(c) For Diamond IA airplanes: Within 2 years after the effective date of this AD, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Install an ice detector in accordance with Mitsubishi MU–300 Service Bulletin No. 30–007, dated January 12, 1996.

(2) Revise the Introduction, Operating Limitations, Emergency Procedures,

Abnormal Procedures, Normal Procedures, Performance, and Weight and Balance Sections of the FAA-approved AFM to address the operation of the ice detector system. This may be accomplished by inserting a copy of Airplane Flight Manual Supplement M300–1003, dated December 6, 1995, in the AFM.

(3) Revise the Operating Limitations, Emergency Procedures, Abnormal Procedures, Normal Procedures, and Performance Sections of the AFM to limit the maximum flap position to flaps 10 degrees for flight in icing conditions or landing after an icing encounter, and to allow landing flaps of 30 degrees if the icing encounter meets certain criteria. This may be accomplished by inserting a copy of Mitsubishi MU–300 Diamond IA Airplane Flight Manual, Revision 9, dated January 5, 1996, in the AFM.

(d) Accomplishment of the requirements of paragraph (b) or (c) of this AD, as applicable, constitutes terminating action for the requirements of AD 94–25–10, amendment 39–9094 [and paragraph (a) of this AD.] Following accomplishment of paragraph (b) or (c) of this AD, as applicable, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

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

Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4718 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–209–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400, 400A, 400T, and MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Raytheon (Beech) Model 400, 400A, 400T, and MU–300–10 airplanes, and Mitsubishi Model MU–300 airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to provide pilots with special operating procedures during icing conditions. This proposal would require modification of the horizontal stabilizer ice protection system. This proposal also would remove Model MU–300 airplanes from the applicability of that AD. This proposal is prompted by the

development of a modification that will positively address the unsafe condition. The actions specified by the proposed AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

DATES: Comments must be received by April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–209–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 Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Tina L. Miller, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4168; fax (316) 946–4407.

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–209–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–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 5, 1994, the FAA issued AD 94–25–10, amendment 39–9094 (59 FR 64112, December 13, 1994), applicable to all Raytheon Model 400, 400A, 400T, and MU–300–10 airplanes, and all Mitsubishi Model MU–300 airplanes, to require a revision to the FAA-approved Airplane Flight Manual (AFM) to provide pilots with special operating procedures during icing conditions. That action was prompted by the results of icing tests, which demonstrated that ice accumulations on the horizontal stabilizer may cause the airplane to pitch down at certain flaps settings. The requirements of that AD are intended to prevent uncommanded nose-down pitch at certain flap settings during icing conditions.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved Beechcraft Service Bulletin No. 2600, dated November 1995. The service bulletin describes procedures for modification of the horizontal stabilizer ice protection system on Model 400, 400A, and MU–300–10 airplanes. The modification involves replacing the existing ice protection system with an improved system and changing the horizontal stabilizer icing controls and annunciation. Accomplishment of this modification will improve the ice protection capabilities of the horizontal stabilizer.

That Beechcraft service bulletin does not address Model 400T airplanes, since the modification described in it has not been tested or approved for those airplanes. Nevertheless, the FAA has determined that modification of the horizontal stabilizer ice protection system on Model 400T airplanes must be accomplished in order to address the unsafe condition and ensure the continued operational safety of those airplanes.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–25–10 to continue to require revising the Limitations and Normal Procedures Sections of the AFM to provide pilots with special operating procedures during icing conditions. The proposed AD also would require modification of the horizontal stabilizer ice protection system. The modification would be required to be accomplished in accordance with the service bulletin described previously (if applicable), or in accordance with a method approved by the FAA. Accomplishment of the modification constitutes terminating action for the AFM revision required currently by AD 94–25–10.

Additionally, the proposed AD would remove Model MU–300 airplanes from the applicability of the existing AD. The FAA is considering issuing separate rulemaking action to require, among other things, certain AFM revisions and installation of an ice detector on those airplanes.

Cost Impact

There are approximately 237 Raytheon (Beech) Model 400, 400A, 400T, and MU–300–10 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 39 Model 400 and MU–300–10 airplanes, 67 Model 400A airplanes, and 80 Model 400T airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 94–25–10 (AFM revision) take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $11,160, or $60 per airplane.

The modification that is proposed in this AD would take approximately 320 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $37,000 and $45,000 per airplane. Based on these figures, the cost impact on the proposed requirements of this AD U.S. operators of those airplanes is estimated to be between $10,453,200 and $11,941,200, or between $56,200 and 64,200 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of

this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9094 (59 FR 64112, December 13, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Raytheon Aircraft Company (Formerly Beech): Docket 96–NM–209–AD. Supersedes AD 94–25–10, Amendment 39–9094.

Applicability: All Model 400, 400T, and MU–300–10 airplanes; and Model 400A airplanes having serial numbers RK–1 through RK–107 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose-down pitch at certain flap settings during icing conditions, accomplish the following:

(a) Within 20 days after December 28, 1994 (the effective date of AD 94–25–10, amendment 39–9094), revise the Limitations Section and Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following text. This may be accomplished by inserting a copy of this AD in the AFM.

''Icing Conditions

If icing conditions are encountered during flight, no greater than 10 degrees flaps may be utilized for landing unless the following conditions are met:

1. The icing conditions were encountered for less than 10 minutes, and the Ram Air Temperature (RAT) during such encounter was warmer than −8 degrees C.

Or

2. A RAT of +5 degrees C or warmer is observed during approach and landing.

If either of the above two conditions are met, 30 degrees flaps may be utilized for landing.

Otherwise:

Flaps (landing flaps setting)—10 degrees
Land Select (LAND SEL) Switch—Flaps 10 degrees

Use landing data for 10 degrees flaps from Appendix 1 of this AD.

(b) Within 2 years after the effective date of this AD, modify the horizontal stabilizer ice protection system in accordance with paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of this modification constitutes terminating action for the AFM revision required by paragraph (a) of this AD. Following such accomplishment, that AFM revision may be removed from the AFM.

(1) For Model 400, 400A, and MU–300–10 airplanes: Accomplish the modification in accordance with Beechcraft Service Bulletin No. 2600, dated November 1995.

(2) For Model 400T airplanes: Accomplish the modification in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

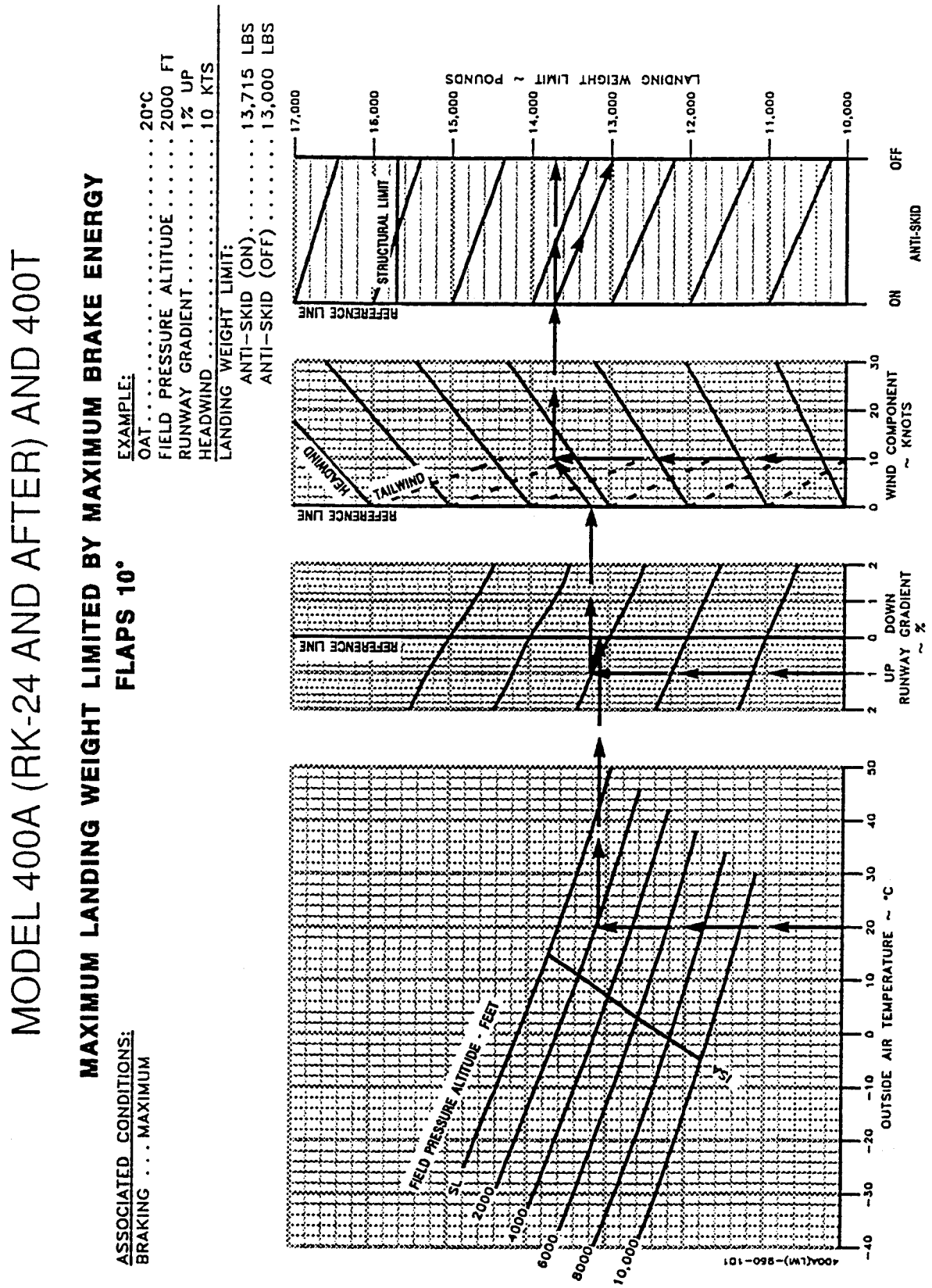
(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then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

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

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

BILLING CODE 4910–13–U

Appendix 1


MODEL 400A (RK-24 AND AFTER) AND 400T
MAXIMUM LANDING WEIGHT LIMITED BY MAXIMUM BRAKE ENERGY
FLAPS 10°
ASSOCIATED CONDITIONS:
BRAKING . . . MAXIMUM
EXAMPLE:
OAT . . . . . 20°C
FIELD PRESSURE ALTITUDE . . . . . 2000 FT
RUNWAY GRADIENT . . . . . 1% UP
HEADWIND . . . . . 10 KTS
LANDING WEIGHT LIMIT:
ANTI-SKID (ON) . . . . . 13,715 LBS
ANTI-SKID (OFF) . . . . . 13,000 LBS
OUTSIDE AIR TEMPERATURE ~ °C
FIELD PRESSURE ALTITUDE - FEET
SL
2000
4000
6000
8000
10,000
REFERENCE LINE
UP DOWN
RUNWAY GRADIENT ~ %
HEADWIND
TAILWIND
WIND COMPONENT ~ KNOTS
STRUCTURAL LIMIT
LANDING WEIGHT LIMIT ~ POUNDS
ON ANTI-SKID OFF

MODEL 400A (RK-24 AND AFTER) AND 400T

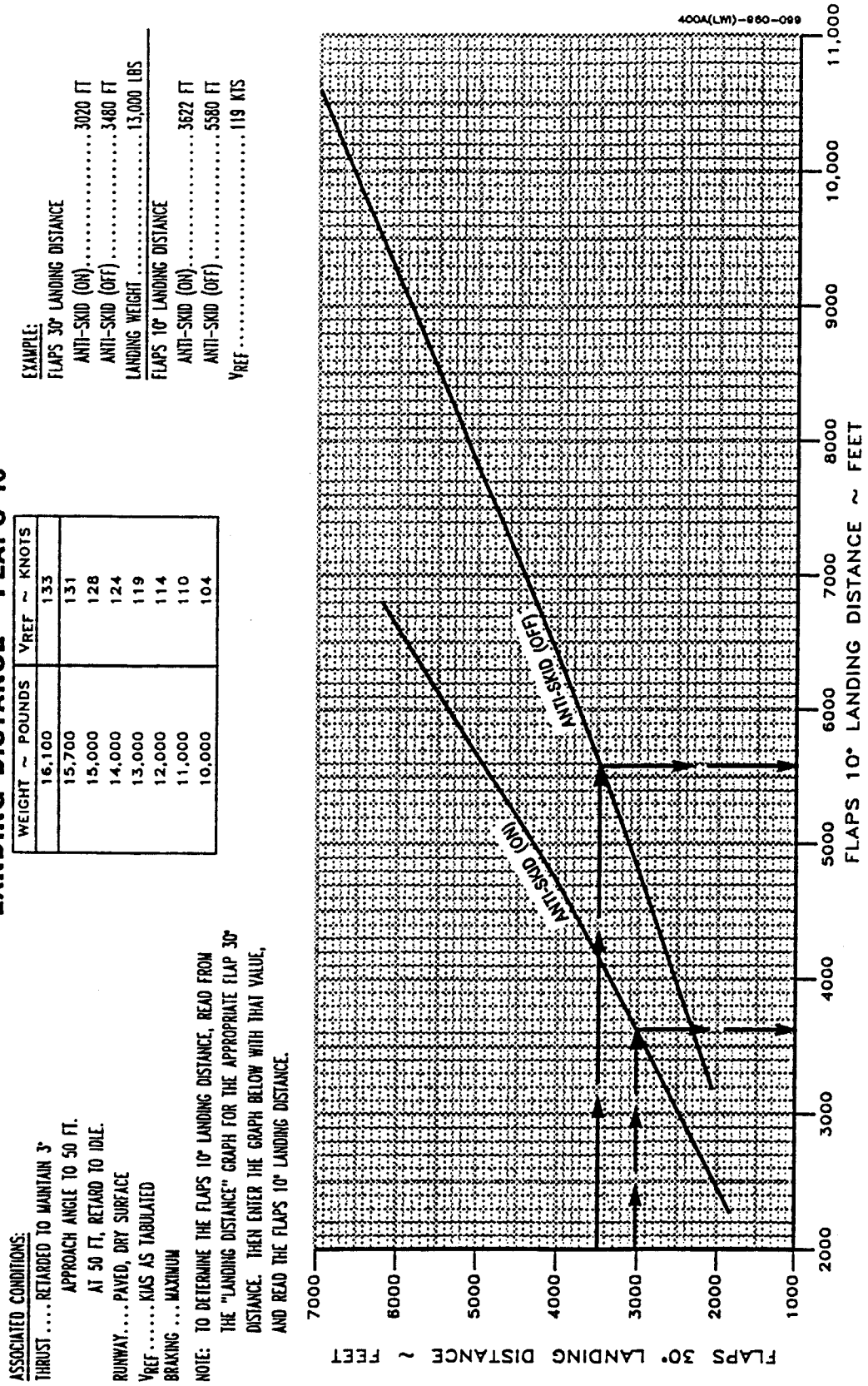
LANDING DISTANCE - FLAPS 10°

WEIGHT ~ POUNDS	VREF ~ KNOTS
16,100	133
15,700	131
15,000	128
14,000	124
13,000	119
12,000	114
11,000	110
10,000	104

ASSOCIATED CONDITIONS:
THRUST....RETARDED TO MAINTAIN 3°
APPROACH ANGLE TO 50 FT.
AT 50 FT, RETARD TO IDLE.
RUNWAY....PAVED, DRY SURFACE
V_{REF}.....KIAS AS TABULATED
BRAKING ...MAXIMUM

NOTE: TO DETERMINE THE FLAPS 10° LANDING DISTANCE, READ FROM THE "LANDING DISTANCE" GRAPH FOR THE APPROPRIATE FLAP 30° DISTANCE. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING DISTANCE.

EXAMPLE:
FLAPS 30° LANDING DISTANCE
ANTI-SKID (ON).....3020 FT
ANTI-SKID (OFF).....3480 FT
LANDING WEIGHT.....13,000 LBS
FLAPS 10° LANDING DISTANCE
ANTI-SKID (ON).....3622 FT
ANTI-SKID (OFF).....5580 FT
V_{REF}.....119 KTS



MODEL 400A (RK-24 AND AFTER) AND 400T

LANDING BRAKE ENERGY - FLAPS 10°

ASSOCIATED CONDITIONS:

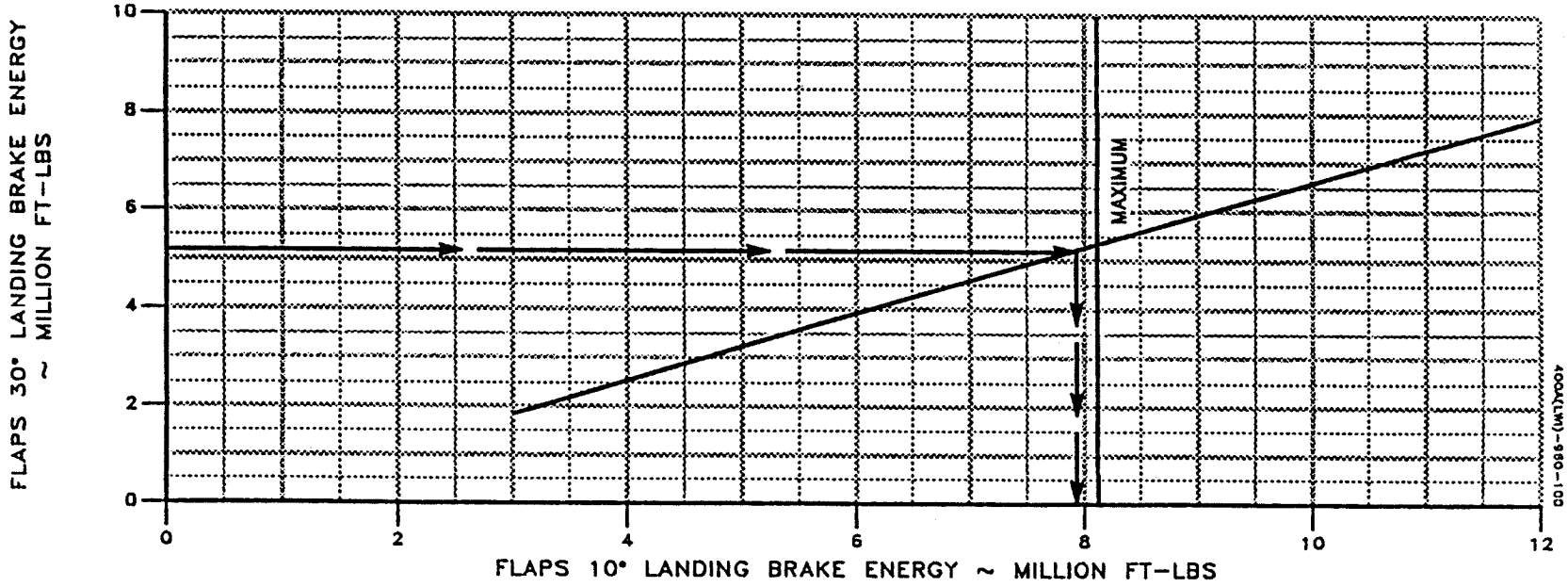
THRUST.....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.
RUNWAY.....PAVED, DRY SURFACE
BRAKING.....MAXIMUM
ANTI-SKID....(ON) OR (OFF)

EXAMPLE:

LANDING BRAKE ENERGY
ANTI-SKID (ON).....5.18 MIL FT-LBS

FLAPS 10° LANDING BRAKE ENERGY
ANTI-SKID (ON).....7.93 MIL FT-LBS

NOTES: 1. MAXIMUM LANDING BRAKE ENERGY = 8.12 MILLION FT-LBS.
2. TO DETERMINE THE FLAPS 10° LANDING BRAKE ENERGY, READ FROM THE "LANDING BRAKE ENERGY" GRAPH FOR THE APPROPRIATE FLAP 30° LANDING BRAKE ENERGY. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING BRAKE ENERGY.



MODEL 400A (RK-1 THRU RK-23), 400, AND MU-300-10

LANDING FIELD LENGTH - FLAPS 10°

ASSOCIATED CONDITIONS:

THRUST....RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.

RUNWAY....PAVED, DRY SURFACE

V_{REF}.....KIAS AS TABULATED

BRAKING...MAXIMUM

NOTE: TO DETERMINE THE FLAPS 10° LANDING FIELD LENGTH, READ FROM THE "LANDING FIELD LENGTH" GRAPH FOR THE APPROPRIATE FLAP 30° FIELD LENGTH. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING FIELD LENGTH.

WEIGHT ~ POUNDS	V_{REF} ~ KNOTS
15,780	133
14,220	126
13,000	121
12,000	116
11,000	112
10,000	106
9000	101

EXAMPLE:

FLAPS 30° LANDING FIELD LENGTH

ANTI-SKID (ON).....3550 FT

ANTI-SKID (OFF).....4350 FT

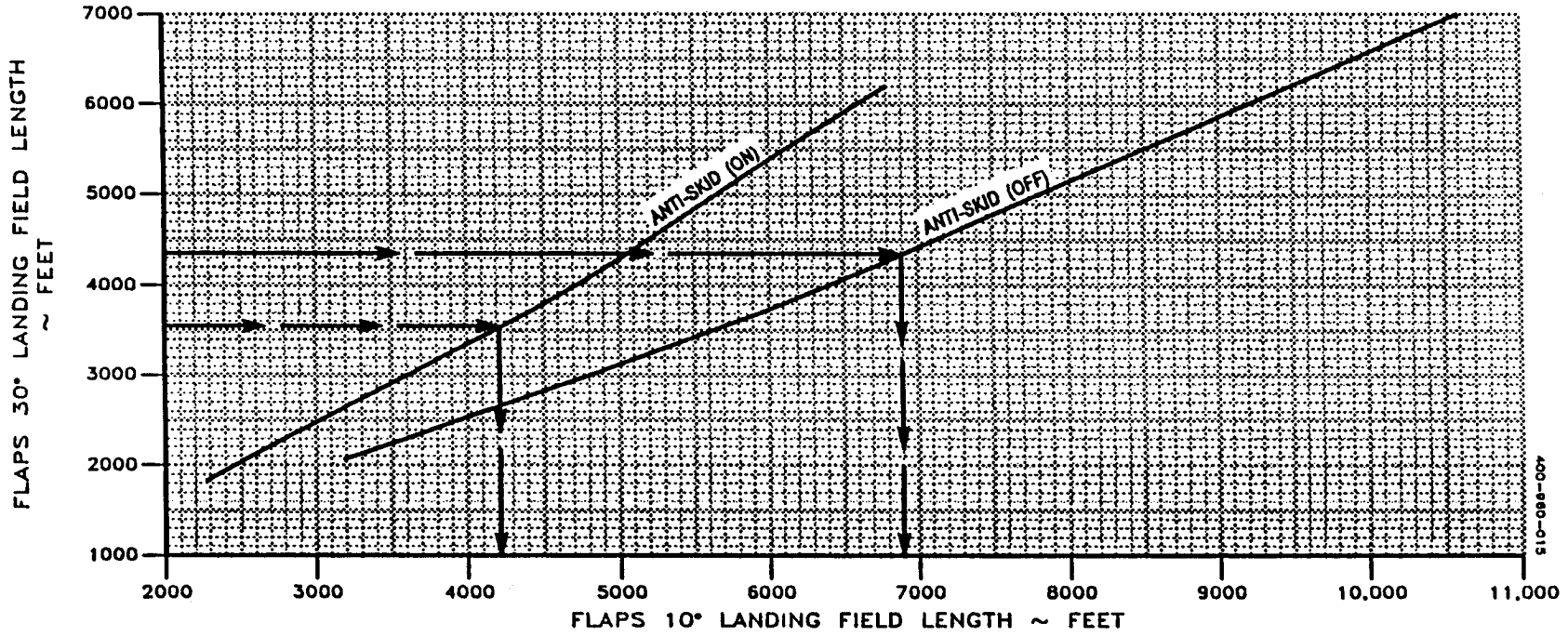
LANDING WEIGHT.....13,700 LBS

FLAPS 10° LANDING FIELD LENGTH

ANTI-SKID (ON).....4214 FT

ANTI-SKID (OFF).....6892 FT

V_{REF}.....124 KTS

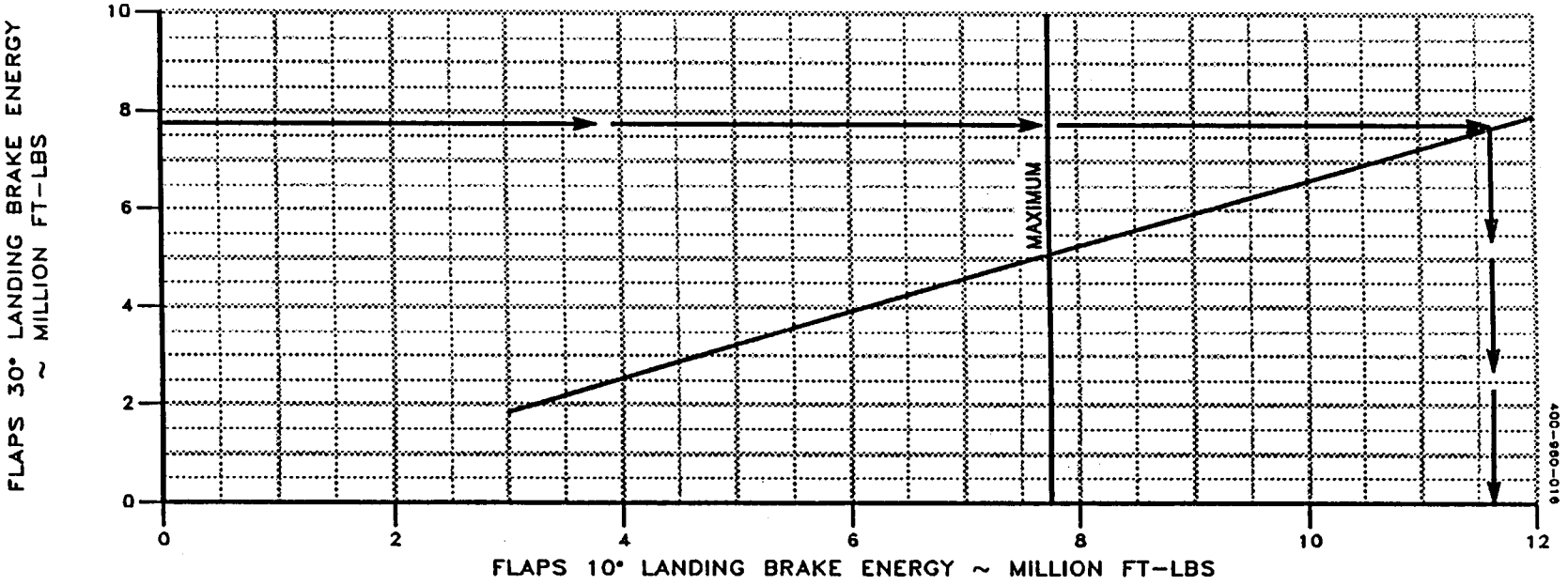


MODEL 400A (RK-1 THRU RK-23), 400, AND MU-300-10

LANDING BRAKE ENERGY - FLAPS 10°

ASSOCIATED CONDITIONS:
THRUST . . . . . RETARDED TO MAINTAIN 3° APPROACH ANGLE TO 50 FT. AT 50 FT, RETARD TO IDLE.
RUNWAY. . . . . PAVED, DRY SURFACE
BRAKING . . . . . MAXIMUM
ANTI-SKID . . . . (ON) OR (OFF)
NOTES: 1. MAXIMUM LANDING BRAKE ENERGY = 7.76 MILLION FT-LBS.
2. TO DETERMINE THE FLAPS 10° LANDING BRAKE ENERGY, READ FROM THE "LANDING BRAKE ENERGY" GRAPH FOR THE APPROPRIATE FLAP 30° LANDING BRAKE ENERGY. THEN ENTER THE GRAPH BELOW WITH THAT VALUE, AND READ THE FLAPS 10° LANDING BRAKE ENERGY.

EXAMPLE:
LANDING BRAKE ENERGY
ANTI-SKID (ON). . . . . 7.75 MIL FT-LBS
FLAPS 10° LANDING BRAKE ENERGY
ANTI-SKID (ON). . . . . EXCEEDS MAXIMUM



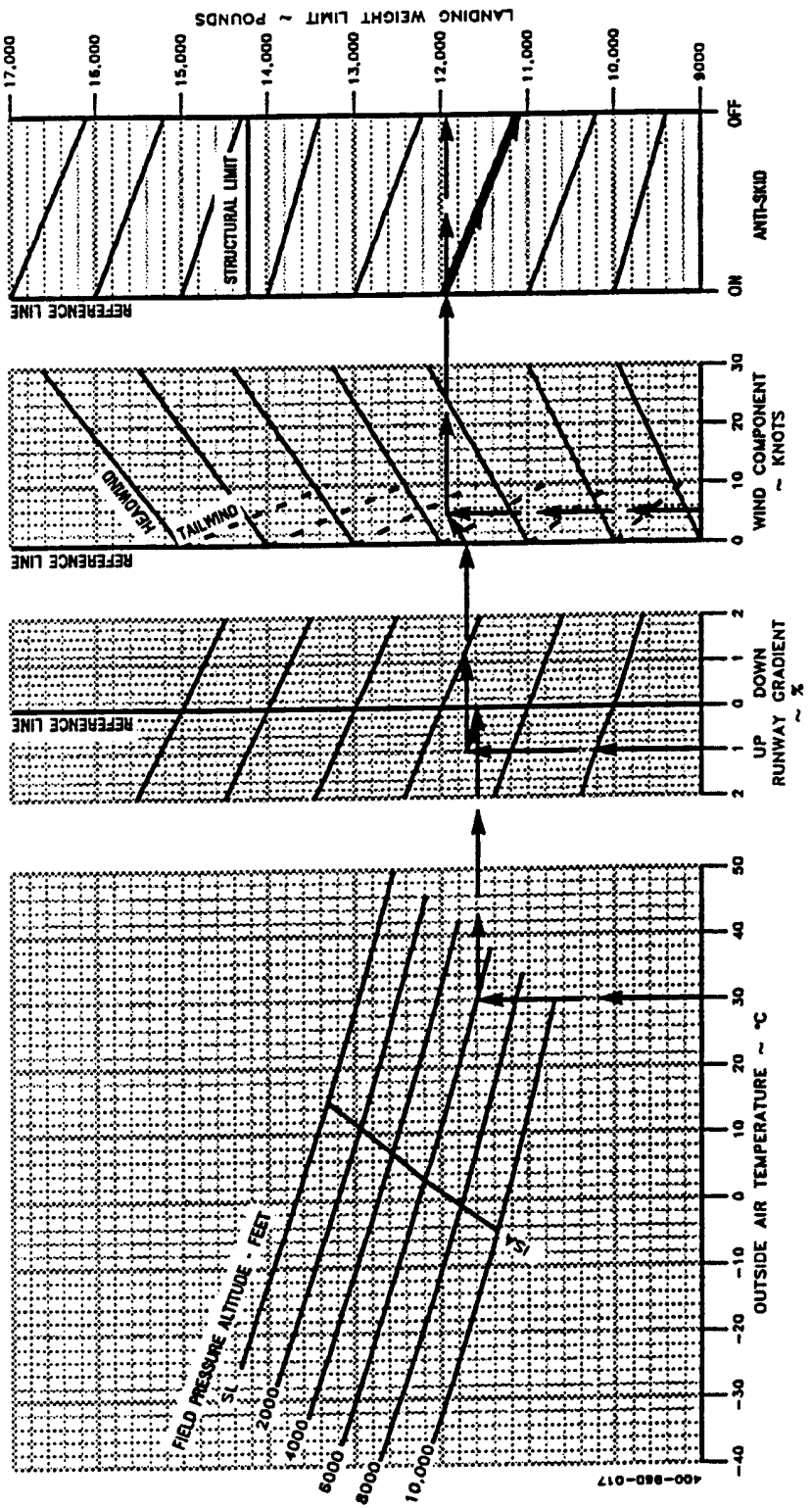
MODEL 400A (RK-1 THRU RK-23), 400, AND MU-300-10

MAXIMUM LANDING WEIGHT LIMITED BY MAXIMUM BRAKE ENERGY

FLAPS 10°

ASSOCIATED CONDITIONS:
BRAKING . . . MAXIMUM

EXAMPLE:
OAT . . . . . 30°C
FIELD PRESSURE ALTITUDE . . . . . 6000 FT
RUNWAY GRADIENT . . . . . 1% UP
HEADWIND . . . . . 5 KTS
LANDING WEIGHT LIMIT:
ANTI-SKID (ON) . . . . . 11,940 LBS
ANTI-SKID (OFF) . . . . . 11,100 LBS



Issued in Renton, Washington, on February 20, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–4719 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–13–C

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Household Products Containing Petroleum Distillates and Other Hydrocarbons; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (''CPSC'' or ''Commission'') has reason to believe that child-resistant packaging may be needed to protect children from serious illness or injury from products that contain either petroleum distillates or other hydrocarbons or combinations of these ingredients. This advance notice of proposed rulemaking (''ANPR'') initiates a rulemaking proceeding under the Poison Prevention Packaging Act (''PPPA''). Existing PPPA standards require child-resistant packaging for some products that contain petroleum distillates or other hydrocarbons. The Commission desires information on a variety of issues concerning products containing petroleum distillates or other hydrocarbons as it considers the possibility of requiring child-resistant packaging for additional consumer products that contain these substances.

The Commission solicits written comments from interested persons concerning the risks of injury or illness associated with household products containing petroleum distillates and other hydrocarbons, the regulatory alternatives discussed in this notice, other possible means to address these risks, and the economic impacts of the various regulatory alternatives.

DATES: Written comments and submissions in response to this notice must be received by the Commission by May 12, 1997.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments should be captioned ''ANPR for Petroleum Distillates.''

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION:

I. Background

1. *Introduction.* Petroleum distillates are a group of hydrocarbon-based chemicals that are refined from crude oil. Petroleum distillates include gasoline, naphtha, mineral spirits, kerosene, paraffin wax, and tar. They are the primary ingredient in many consumer products, including certain furniture polishes, paint solvents, adhesives, and automotive chemicals. As explained below, the presence of such petroleum distillates in products may contribute to the products' toxicity.

A number of consumer products contain hydrocarbons that are not petroleum distillates, but that can cause similar toxic effects. These other hydrocarbons include substances such as benzene, toluene, xylene, pine oil, turpentine, and limonene.

The toxicity of petroleum distillates and other hydrocarbons affects the respiratory system. Aspiration of small amounts of these chemicals directly into the lung, or into the lung during vomiting of an ingested chemical, can cause chemical pneumonia, pulmonary damage, and death. Petroleum distillates with low viscosity, such as gasoline, kerosene, and mineral seal oil, possess the greatest potential for aspiration.[1]

As explained below, all household products that contain 10 percent or more of petroleum distillates, or of benzene, toluene, xylene, or turpentine, are required to have hazard warnings by regulations under the Federal Hazardous Substances Act (''FHSA''). Some other products that contain hydrocarbons may be required to be labeled by more general FHSA requirements. Some, but not all, of these products are also required to be in child-resistant packaging under PPPA regulations.

The purpose of this notice is to commence a rulemaking proceeding to examine whether additional products containing petroleum distillates or other hydrocarbons should be in child-resistant packaging.[2]

II. The Possible Need for Additional Regulation

1. *Poisoning information.* The Commission evaluated pediatric poisoning cases associated with product classes that are known to include products that contain hydrocarbons, and that are not currently required to be in child-resistant packaging. Such product areas include adhesives, automotive chemicals, workshop chemicals, metal polishes, spot removers, cleaning fluids, shoe polishes, and lubricants. The CPSC staff reviewed data from various sources, including the National Electronic Injury Surveillance System (''NEISS''), and the American Association of Poison Control Centers' (''AAPCC'') Toxic Exposure Surveillance System (''TESS'').

According to NEISS, between 1990 and 1994 there was an annual estimated average of about 2,300 emergency room visits of children under 5 years of age associated with exposure to product categories that are not required to be in child-resistant packaging and that include products containing petroleum distillates. About 5 percent of these cases resulted in hospitalization.

Between October 1994 and May 1996, a CPSC contractor conducted telephone investigations on incidents reported through NEISS that were treated in hospital emergency rooms and involved children under 5 years of age who had been exposed to products in the categories described above. The telephone investigations produced 43 cases for analysis. Of these, 18 involved petroleum distillates and 25 involved products containing the hydrocarbon pine oil. Most of the incidents occurred in the child's home. About 50 percent of the victims accessed the product from its normal storage area rather than from another location. Seventy-nine percent of the incidents involved products in the original packaging. Most of these containers were reported to be non-child-resistant.

In 1994, the Poison Control Centers (''PCC's) reported 5,791 exposures of children under 5 years of age that were attributed to product categories that included only products that contain petroleum distillates or other hydrocarbons. Of these, 1130 cases reported symptoms, most of which were minor (exhibited some symptoms that were minimally bothersome to the patient, *i.e.* the symptoms usually resolved rapidly and usually involved skin or mucous membranes). Ninety-three of these cases reported moderate outcomes (exhibited symptoms that were more pronounced, more prolonged, or of more of a systemic nature than minor symptoms). In addition, 7 cases reported major symptoms (life-threatening or resulted in significant residual disability or disfigurement). A number of other PCC product categories may also include products that contain petroleum distillates or other hydrocarbons.

The Commission is aware of 10 reported deaths since 1973 of children under 5 following exposure to products that contained petroleum distillates and for which child-resistant packaging is not currently required. Six of these reports indicated that the deaths were caused by chemical pneumonitis or aspiration.

The death and injury data discussed above suggest that the safety of young children could be improved if additional products that contain petroleum distillates and other hydrocarbons are required to be packaged in child-resistant packaging.

2. *Existing regulatory requirements.*

a. Applicable requirements under the Federal Hazardous Substances Act (''FHSA''). The CPSC regulates the labeling of hazardous household products under the FHSA, 15 U.S.C. 1261–1278. Currently, FHSA regulations require specified aspiration hazard labeling for products containing 10 percent or more by weight of benzene, toluene, xylene, or petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline, mineral spirits, Stoddard solvent, and ''related'' distillates. 16 CFR 1500.14(a)(3), (b)(3). The label must bear the signal word ''DANGER,'' the statement of hazard ''Harmful or fatal if swallowed,'' and the statement ''Call physician immediately.'' 16 CFR 1500.14(b)(3). A similar labeling requirement applies to products containing 10 percent or more of turpentine because of the aspiration hazard. See 16 CFR 1500.14(b)(5).

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[1] Liquids with high viscosity are thick and more like syrup, while liquids with low viscosities are thin and more watery. See Table 1.

[2] The Commission voted 2–1 to approve publication of this ANPR. Voting to approve were Chairman Ann Brown and Commissioner Thomas Moore. Commissioner Mary Sheila Gall voted to develop a Request for Information for publication in the Federal Register and to utilize other available information sources instead of an ANPR. Commissioner Gall also issued a statement concerning this vote. The statement is available from the Office of the Secretary.

In addition, section 2(p)(1) of the FHSA requires any household product that is ''toxic'' to bear specified hazard labeling. 15 U.S.C. 1261(p)(1). Any product that presents an aspiration risk from hydrocarbons is required to bear the labeling specified by section 2(p)(1), regardless of whether a regulation specifically applies to that product.

b. Applicable requirements under the Poison Prevention Packaging Act (''PPPA''). The CPSC also regulates the packaging of many household products containing petroleum distillates or other hydrocarbons under the PPPA, 15 U.S.C. 1471–1476. PPPA regulations require that products be sold in child-resistant packaging.

Currently, some consumer products containing 10 percent or more by weight of petroleum distillates, and with a viscosity less than 100 Saybolt Universal Seconds (''SUS'') at 100°F, are subject to the PPPA's child-resistant packaging standards.[3] The particular types of petroleum distillate products that require child-resistant packaging under the PPPA include (1) prepackaged liquid kindling and illuminating preparations (*e.g.*, lighter fluid) (16 CFR 1700.14(a)(7)), (2) prepackaged solvents for paint or other similar surface-coating materials (*e.g.*, varnishes)(16 CFR 1700.14(a)(15)), and (3) nonemulsion liquid furniture polish (16 CFR 1700.14(a)(2)). Child-resistant packaging is also required for certain solvents containing 10 percent or more of benzene, toluene, or benzene, and with a viscosity less than 100 SUS at 100°F. 16 CFR 1700.14(a)(15). In addition, products containing 10 percent or more of turpentine are required to be in child-resistant packaging. 16 CFR 1700.14(a)(6).

c. Varying scope of the FHSA and PPPA regulations. While FHSA labeling regulations apply generically to products that contain 10 percent or more petroleum distillates or other hydrocarbons, only certain specified products are required to be in child-resistant packaging under the current PPPA regulations. Therefore, a number of household products containing petroleum distillates or other hydrocarbons are not required to be in child-resistant packaging. For example, cleaning solvents, automotive chemicals, shoe care products, and floor care products may contain large amounts of various petroleum distillates. These products are not required to be sold in child-resistant packaging, but some of them are required to be labeled under the FHSA. *See* 16 CFR 1500.14(a)(3), (b)(3).

In addition, there are some anomalies under the current PPPA regulations concerning which products are required to be in child-resistant packaging. For example, the existing standards require child-resistant packaging of prepackaged kerosene for use as lamp fuel. 16 CFR 1700.14(a)(7). However, a gun cleaning solvent that contains over 90 percent kerosene does not have this requirement. Mineral spirits used as a paint solvent require child-resistant packaging, 16 CFR 1700.14(a)(15), but such packaging is not required for spot removers containing 75 percent mineral spirits or water repellents containing 95 percent mineral spirits. Yet, all of these consumer products are required by the FHSA to be labeled ''Harmful or fatal if swallowed.'' 16 CFR 1500.14(b)(3).

A rule to require child-resistant packaging of all household products that contain petroleum distillates and have specified characteristics would create a more consistent regulatory approach and afford greater protection against poisonings.

III. Issues to be Considered During the Rulemaking

During this rulemaking, the Commission will consider the following major issues.

1. *Viscosity and percentage composition.* As noted above, the PPPA's child-resistant packaging standards currently apply to certain specified consumer products containing 10 percent or more by weight of petroleum distillates, and with a viscosity less than 100 SUS at 100 °F. Products associated with chemical pneumonia and death have had viscosities below this level. Again, liquids with low viscosities are more likely to be aspirated than more syrup-like liquids with high viscosities.

The Commission's staff collected a limited number of household products that contain petroleum distillates and measured their viscosities. The results are listed in Table 1.

TABLE 1.—THE VISCOSITIES OF PRODUCTS CONTAINING PETROLEUM DISTILLATES

Product	PPPA Regulated (yes or no)	Viscosity (SUS @100 °F)[4]
Motor oil (10W–30) ...	N	≈325
Heavy Mineral Oil	N	180
Baby Oil	N	≈70
Furniture Polish	Y	≈40
Gasoline Treatment ..	N	≈35
Carburetor Cleaner ...	N	<32[5]
Degreaser	N	<32[4]
Lighter Fluid	Y	<32[4]

[4] The staff measured the viscosity at 100 °F using a Brookfield viscometer calibrated in centistokes (cs). The value was converted to SUS using Table 1 of ASTM D 2161–93, Standard Practice for Conversion of Kinematic Viscosity to Saybolt Universal Viscosity or to Saybolt Furol Viscosity.

[5] There are no equivalent viscosities measured in SUS for viscosities less than 1.8 cs. The viscosity of 1.83 cs is equivalent to 32 SUS.

The staff's initial laboratory analysis, summarized in Table 1, shows that lighter weight oils, including some baby oils, would be included in a regulation that required child-resistant packaging of all products containing at least 10 percent petroleum distillates with a viscosity less than 100 SUS at 100 °F.

[3] Saybolt Universal Seconds is a measure of viscosity. The higher the SUS, the more viscous the liquid.

There are reported cases of lipoid pneumonia and deaths from aspiration of lubricants, including baby oil, a spray lubricant, chain saw oil, and trumpet valve oil.[6]

The Commission will consider whether a viscosity criterion should be included in any regulation requiring child-resistant packaging for products containing petroleum distillates or other hydrocarbons. If such a criterion is to be included, the Commission will also consider at what level it should be set.

2. *Other hydrocarbons.* The CPSC's FHSA regulations for petroleum distillates require labeling of some products containing other hydrocarbons, including products that contain 10 percent or more by weight of benzene, toluene, or xylene. 16 CFR 1500.14(a)(3), (b)(3). FHSA labeling is required because these substances have an aspiration hazard similar to petroleum distillates.

A number of household products contain low-viscosity hydrocarbons other than petroleum distillates. These hydrocarbons include benzene, toluene, xylene, and terpenes. For example, terpene hydrocarbons derived from wood or fruit are in products such as turpentine, pine oil, and limonene. Pine oil and limonene are found in cleaning products and spot removers, as well as disinfectants. (Products marketed as disinfectants are not regulated by the CPSC; they are regulated as pesticides by the Environmental Protection Agency (''EPA'').) Although pine oil and limonene cleaning products and spot removers require FHSA labeling, they are not currently required to be in child-resistant packaging.

The Commission will consider whether there is a need for a special packaging standard applicable to products containing hydrocarbons other than petroleum distillates.

3. *Aerosols.* The PPPA regulation for furniture polish excludes products in aerosol form. The rationale for excluding aerosol furniture polishes was that aerosols would be addressed separately. 36 FR 18012 (September 8, 1971). However, there has been no further regulatory action on aerosol furniture polishes.

The child-resistant packaging requirements for paint solvents and kindling and illuminating preparations do not specifically exempt aerosol products. See 16 CFR 1700.14(a)(7), (a)(15). However, the Commission is not aware of any paint solvent or liquid kindling or illuminating fluid sold in an aerosol form.

CPSC exposure data on aerosol products are limited.[7] Inhalation of a spray lubricant has been associated with lipoid pneumonia.[8] The NEISS case investigation study, described above, identified 4 percent of the cases as involving products in aerosol form. However, none of the people in these aerosol cases was hospitalized.

The cases described in the medical literature that resulted from the inhalation of petroleum distillates from aerosols or vapors involved prolonged or repeated exposure of adults. However, children are subject to greater inhalation risks than are adults, for equal exposure levels.[9]

The Commission will consider whether aerosol products should be included within any regulation applicable to products containing petroleum distillates and other hydrocarbons.

4. *Restricted flow.* The PPPA regulation for liquid furniture polish includes an additional requirement that no more than 2 milliliters of product shall be obtained when the container is shaken, squeezed, or activated once. 16 CFR 1700.14(a)(2). This requirement was included, in part, because an open container of polish may be moved and used multiple times throughout the house before the container is closed. 37 FR 5613 (March 17, 1972). Furniture polish is the only PPPA-regulated substance with a restricted-flow requirement.

The Commission will consider whether other products should be subject to a restricted flow requirement.

IV. Rulemaking Procedure

In order to issue a regulation under the PPPA, the Commission would have to find that ''the degree or nature of the hazard to children in the availability of (petroleum distillates and other hydrocarbons), by reason of (their) packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance.'' 15 U.S.C. 1472(a)(1). The Commission would also have to find that child-resistant packaging ''is technically feasible, practicable, and appropriate'' for products containing petroleum distillates or other hydrocarbons. 15 U.S.C. 1472(a)(2).

According to the PPPA's legislative history, ''technically feasible'' means that technology exists to produce packaging that conforms to the standards.[10] ''Practicable'' means that special packaging complying with the standards can utilize modern mass production and assembly line techniques.[11] ''Appropriate'' means that packaging complying with the standards will adequately protect the integrity of the substance and not interfere with its intended storage or use.[12]

In addition to the required findings, the Commission is required to consider, but not necessarily make formal findings on, (a) the reasonableness of the standard, (b) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances, (c) the manufacturing practices of industries affected by the PPPA, and (d) the nature and use of the household substance. 15 U.S.C. 1472(b).

A rulemaking proceeding under the PPPA is subject to the requirements of the Administrative Procedure Act. Therefore, the proceeding can be commenced by publication of a notice of proposed rulemaking (''NPR''), without having previously published an ANPR. However, in this proceeding, the Commission is publishing an ANPR in order to obtain additional information before deciding whether to propose a special packaging standard for products that contain petroleum distillates or other hydrocarbons.

V. Comments Requested Concerning the Scope of a Rule

The Commission is seeking information on issues relevant to defining the scope of any child-resistant packaging requirement for products containing low-viscosity petroleum distillates and other hydrocarbons. These issues include the following:

1. What, if any, viscosity and/or percentage composition should be used as a threshold for requiring products that contain petroleum distillates to be in child-resistant packaging?

2. Should aerosol products be included in a requirement for the child-resistant packaging of products containing petroleum distillates or other

[6] Reyes De La Rocha, S. et al. Lipoid pneumonia secondary to baby oil aspiration: a case report and review of the literature. Pediatric Emergency Care, 1:74, 1985.

[7] Nierenberg, D.W., et al. Mineral Spirits Inhalation Associated with Hemolysis, Pulmonary Edema, and Ventricular Fibrillation. Arch Intern Med, 151:14337, 1991. Rodriguez de la Vega, A. et al. Kerosene-induced Asthma. Annals of Allergy, 64:362, 1990. Glynn, K.P. and Gale, N., Exogenous Lipoid Pneumonia due to Inhalation of Spray Lubricant, Chest, 97:1265, 1990.

[8] Id. (Glynn, 1990).

[9] Schiller-Scotland, C.F, et al. Experimental data for total disposition in the respiratory tract of children. Toxicol. Lett., 72: 137, 1994.

[10] S. Rep. 845, 91st Cong., 2d Sess. 10 (1970).

[11] Id.

[12] Id.

hydrocarbons? The Commission seeks information on the possible effects to a young child of a single acute exposure to an aerosol product containing petroleum distillates.

3. Should PPPA regulation extend only to petroleum distillates or should such regulation also extend to other hydrocarbons, such as benzene, toluene, xylene, turpentine, pine oil, and limonene?

4. Should restricted flow be an additional requirement for certain products?

VI. Additional Requests for Information

The Commission believes that information on the following issues would also be helpful as it considers whether child-resistant packaging should be required for the entire class of consumer products that present an aspiration hazard because they contain petroleum distillates or other hydrocarbons.

1. *Chemical properties.* Information concerning the chemical properties of individual consumer products that contain petroleum distillates or other hydrocarbons will be used to compare products that do not currently require child-resistant packaging with those that do. The Commission requests information about the form (e.g., liquid or aerosol), formulation (including the amount of each component), and viscosity of each product.

2. *Users and use patterns.* The Commission would like information about consumer use patterns for various types of products containing petroleum distillates or other hydrocarbons. The Commission requests information concerning: The intended use of the product (e.g., as a shoe waterproofer, carpet cleaner, upholstery spot remover); the location(s) where it is used (e.g., in a garage, a kitchen, a bathroom); the frequency of use (e.g., daily, monthly, seasonally); how long a package of the product is retained in the home (e.g., used just once or stored for long periods between uses); and the location(s) where it is stored when not in use. In addition, is the product used by consumers (more than occasionally) or is the product only used in the home by workers, such as repair or cleaning persons?

3. *Current packaging and labeling.* Information about the packaging of products that contain petroleum distillates will be used to assess the technical feasibility, practicability, and appropriateness of child-resistant packaging. The Commission requests information describing current packaging, such as packaging sizes, container material, closure material, closure design, and ASTM classification if the package is child-resistant. Information is also requested about whether the product has labels with warnings and instructions for use.

4. *Economic information.* Economic information will be used to evaluate the impact of requiring child-resistant packaging for all products containing petroleum distillates or other hydrocarbons. The Commission requests information about sales of these products and about the range of wholesale and retail prices. Further, the Commission seeks comments on the expected cost of providing child-resistant packaging for these products. In addition, the Commission requests information about the potential impact that such child-resistant packaging requirements would have on businesses, especially small businesses.

5. *Incident information.* Although the Commission monitors data on ingestions by young children of products that contain petroleum distillates and other hydrocarbons, the Commission seeks additional information about such poisoning incidents. This information will be used to assess the extent of injury from different product formulations. The Commission requests information concerning the details of scenarios resulting in poisoning incidents, and the outcome of the incident.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. All comments and submissions should be received no later than May 12, 1997.

VII. Trade Secret or Proprietary Information

Any person responding to this notice who believes that any information submitted is trade secret or proprietary should identify all such information at the time of submission. The Commission's staff will receive and handle such information confidentially and in accordance with section 6(a) of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2055(a). Such information will not be placed in a public file and will not be made available to the public simply upon request. If the Commission receives a request for disclosure of the information or concludes that its disclosure is necessary to discharge the Commission's responsibilities, the Commission will inform the person who submitted the information and provide that person an opportunity to present additional information and views concerning the confidential nature of the information. 16 CFR 1015.18(b).

The Commission's staff will then make a determination of whether the information is trade secret or proprietary information that cannot be released. That determination will be made in accordance with applicable provisions of the CPSA; the Freedom of Information Act (''FOIA''), 5 U.S.C. 552b; 18 U.S.C 1905; the Commission's procedural regulations at 16 CFR part 1015 governing protection and disclosure of information under provisions of FOIA; and relevant judicial interpretations. If any part of information that has been submitted with a claim that the information is a trade secret or proprietary is found to be disclosable, the person submitting the material will be notified in writing and given at least 10 calendar days from the receipt of the letter to seek judicial relief. 15 U.S.C. 2055(a) (5) and (6); 16 CFR 1015.19(b).

Dated: February 21, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–4783 Filed 2–25–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N–0038]

RIN 0910–AA01

Sunscreen Drug Products for Over-the-Counter Human Use; Amendment to the Tentative Final Monograph; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of proposed rulemaking that appeared in the Federal Register of September 16, 1996 (61 FR 48645). The document proposed to amend the tentative final monograph (proposed rule) for over-the-counter (OTC) sunscreen drug products. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: John D. Lipnicki, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

In FR Doc. 96–23547, appearing on page 48645 in the Federal Register of Monday, September 16, 1996, the following correction is made:

§ 352.20 [Corrected]

1. On page 48654, in the third column, in § 352.20 *Permitted combination of active ingredients*, in paragraph (a)(2), beginning in the second line, ''§ 352.10(b), (c), (f), (i), (k), (l), (m), (n), (o), (s), and (u)'' is corrected to read ''§ 352.10(b), (c), (d), (f), (i), (l), (m), (n), (o), (s), and (u)''.

Dated: February 19, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4730 Filed 2–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–4201–N–01]

National Manufactured Home Advisory Council; Notice Seeking Nominations for Membership

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Request for nominations of advisory committee members.

SUMMARY: This notice gives the public an opportunity to nominate persons for appointment to the National Manufactured Home Advisory Council. The 24-member Council, consisting of representatives from consumer, government, and industry organizations or agencies, is consulted before the Department establishes, amends, or revokes manufactured home construction and safety standards.

DATES: Nominations must be received by March 28, 1997.

ADDRESSES: Nominations should be submitted in writing to: Assistant Secretary for Housing-Federal Housing Commissioner, (Attention: Office of Consumer and Regulatory Affairs), Department of Housing and Urban Development, 451 7th Street, SW, Room 9156, Washington, DC 20410–8000.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street, SW, Room 9152, Washington, DC 20410–8000); telephone number (202) 708–6409 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Notice is hereby given that members of the public wishing to nominate persons for appointment to the National Manufactured Home Advisory Council should submit such nominations in writing to the address listed above.

Background:

The National Manufactured Home Advisory Council (Council) was mandated by the National Manufactured Housing Construction and Safety Standards Act of 1974 (title VI of the Housing and Community Development Act of 1974, 42 U.S.C. 5401 *et seq.*) (the Act), which authorized the Federal Manufactured Home Construction and Safety Standards program. Section 605 of the Act (42 U.S.C. 5404) requires the Secretary to appoint a Council that is composed of 24 members.

Eight members are selected from each of the following groups:

- Consumer organizations, community organizations, and recognized consumer leaders;
- The manufactured home industry and related groups, including at least one representative of small business; and
- Government agencies, including Federal, State, and local governments.

The Department consults with the Council to the extent feasible before any changes are made to the manufactured home design and construction standards. This process gives industry, State and local governments, consumers, and community groups an opportunity to consider proposed manufactured housing construction and safety standards and to make recommendations to the Department.

Term of Office and Nominee Information

The appointees to the Council will serve 1-or 2-year terms. The Charter for the Council has been submitted to the Committee Management Secretariat of the General Services Administration (Secretariat) for review, in accordance with 41 CFR 101–6.1007. Nominations of members to be appointed to the Council must be sent to the address indicated above, in the ''Addresses'' section of this notice. Self-nominations to the Council are permitted. When submitting nominations, please include the following information:

1. Name of nominee.
2. Home address and telephone number of nominee.
3. Business address and telephone number of nominee.
4. Group (i.e., consumer, industry, or government) the nominee represents.
5. A copy of a résumé and a statement of pertinent experience and background of the nominee which demonstrates that the nominee is qualified to serve as a member of the Council.
6. Name of group or person(s) making nomination.
7. The following data should be furnished for those nominated as official representatives of organized consumer or industrial groups or associations:
   (a) Name and address of organization.
   (b) Number of official members in organization.
   (c) Nominee's position in organization.
8. For those nominated to represent government agencies, the name of the government agency, its location, and the nominee's position or title should be provided.
9. A written commitment that the applicant or nominee shall actively participate in good faith in the activities of the Council.
10. Any other pertinent comments or remarks.

Future Actions

After receiving notification from the Secretariat of the completed review of the charter, the Department expects to publish notice in the Federal Register that the Council is being renewed. In addition, the Department will comply with the public notice requirements in 41 CFR 101–6.1015(b) before any Council meetings.

Dated: February 13, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–4683 Filed 2–25–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AD76

Law and Order on Indian Reservations; Correction.

AGENCY: Bureau of Indian Affairs.

ACTION: Correction to proposed regulations; reopening of comment period.

SUMMARY: This document contains corrections to the proposed regulations which were published Friday, July 5, 1996 (61 FR 35158). The proposed rule amends regulations governing Courts of Indian Offenses.

DATES: Comments must be received on or before March 28, 1997.

ADDRESSES: Comments are to be mailed to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4641–MIB, Washington, DC 20240; or, hand delivered to Room 4641 at the same address.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs (202) 208–4400.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule that is the subject of these corrections supersedes 25 CFR 11.100(a) and affects those tribes that have exercised their inherent sovereignty by removing the names of those tribes from the list of Courts of Indian Offenses.

The Assistant Secretary-Indian Affairs, or her designee, has received law and order codes adopted by the Lovelock Paiute Tribe of Nevada, the Absentee Shawnee Tribe of Indians of Oklahoma, the Cheyenne-Arapaho Tribes of Oklahoma, the Citizen Potawatomi Nation, the Iowa Tribe of Oklahoma, the Kaw Nation, the Kickapoo Tribe of Oklahoma, the Otoe-Missouria Tribe of Indians, the Pawnee Indian Tribe of Oklahoma, and the Osage Indian Nation (except those matters involving the Osage mineral estate) in accordance with their constitutions and by-laws and approved by the appropriate bureau official. The Assistant Secretary-Indian Affairs recognizes that these courts were established in accordance with the tribes' constitutions and by-laws.

Inclusion in § 11.100, Where are Courts of Indian Offenses established?, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. Tillett v. Lujan, 931 F.2d 636, 640 (10th Cir. 1991) (CFR courts ''retain some characteristics of an agency of the federal government'' but they ''also function as tribal courts''); Combrink v. Allen, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (CFR court is a ''federally administered tribal court''); Ponca Tribal Election Board v. Snake, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) (''The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits.''). Such exercise of inherent sovereignty and the establishment of tribal courts shall comply with the requirements in 25 CFR 11.100(c).

Need for Correction

As published, the proposed rule contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on July 5, 1996 of the proposed regulations, which were the subject of FR Doc. 96–16039, is corrected as follows:

§ 11.100 [Corrected]

1. On page 35159 in the third column and on page 35160 in the first column paragraph (a) is corrected to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this title, the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

(1) Red Lake Band of Chippewa Indians (Minnesota).
(2) Confederated Tribes of the Goshute Reservation (Nevada).
(3) Te-Moak Band of Western Shoshone Indians (Nevada).
(4) Yomba Shoshone Tribe (Nevada).
(5) Kootenai Tribe (Idaho).
(6) Shoalwater Bay Tribe (Washington).
(7) Eastern Band of Cherokee Indians (North Carolina).
(8) Ute Mountain Ute Tribe (Colorado).
(9) Quechan Indian Tribe (Arizona) (Except resident members).
(10) Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California Jurisdiction limited to special fishing regulations).
(11) Louisiana Area (includes Coushatta and other tribes located in the State of Louisiana which occupy Indian and which accept the application of this part); Provided that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the Federal Register.
(12) For the following tribes located in the former Indian Territory (Oklahoma):
(i) Chickasaw Nation.
(ii) Choctaw Nation.
(iii) Thlopthlocco Tribal Town.
(iv) Seminole Nation.
(v) Eastern Shawnee Tribe.
(vi) Miami Tribe.
(vii) Modoc Tribe.
(viii) Ottawa Tribe.
(ix) Peoria Tribe.
(x) Quapaw Tribe.
(xi) Wyandotte Tribe.
(xii) Seneca-Cayuga Tribe.
(xiii) Osage Tribe (Limited to mineral estate matters).

* * * * *

Dated: February 14, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–4686 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–22–P

Minerals Management Service

30 CFR Part 250

RIN 1010–AB97

Oil and Gas Production Measurement, Surface Commingling, and Security

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend MMS regulations governing oil and gas operations in the Outer Continental Shelf (OCS) to update production measurement and surface commingling requirements. The MMS needs this rule to help ensure that gas produced in the OCS is accurately measured and reported.

DATES: MMS will consider all comments received by May 27, 1997. We will begin reviewing comments at that time and may not fully consider comments we receive after May 27, 1997.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Research Branch, at (703) 787–1147.

SUPPLEMENTARY INFORMATION: Pipeline and price deregulation and open access to pipelines that occurred in the late 1980's spawned a restructuring of OCS pipeline system operations. Pipeline companies traditionally were merchants buying and selling gas under long-term contracts to only a few well established customers. Under the Federal Energy Regulatory Commission Order 636, pipeline companies operate as common carriers involved in transportation services to a broad spectrum of gas producers, end users, and transportation brokers. Also, the OCS pipeline systems have hundreds of short-term, limited volume contracts, many of which require daily accounting and balance controls.

Because of the restructuring and complexity in pipeline operating systems and the increasing use and value of natural gas, the accuracy and reliability of meters have become even more important to ensuring product accountability and fiscal responsibility. Therefore, industry has initiated production measurement research that resulted in more precise metering and data collection equipment.

Most of the production in the OCS is natural gas and a 1 percent measurement or reporting uncertainty could result in royalty revenue variations of $15 million per year. MMS is responsible for ensuring accurate production measurement and reporting.

The gas measurement and commingling regulations now in effect were based on conditions before deregulation and before the industry began to apply the results of research efforts. Therefore, MMS is proposing to amend the production measurement and commingling regulations. The regulatory revisions proposed in this rule would:

- Reflect current industry technology,
- Form the basis for a gas verification system (GVS),
- Require tracking of gas lost or used on the lease, and
- Clarify the restrictions on surface commingling.

The liquid measurement regulations of 1988 already give the guidance for our liquid verification system. Therefore, MMS is not proposing technical changes to liquid measurement; we are only clarifying the language.

On June 23, 1994, a meeting was held at the Department of the Interior (DOI) in Washington, D.C., to introduce the oil and gas industry to the principles of this rulemaking and the proposed GVS. The participants generally agreed that the regulations on production measurement should be updated to include current industry standards. The main items discussed at the meeting are as follows:

1. If MMS verifies gas production and also conducts audits, it appears that industry is under a double jeopardy. Currently, MMS only audits some OCS gas production. MMS is proposing to supplement the audits by implementing a limited gas verification program that will create a system to quickly check submitted gas production volumes with gas volume statements. MMS will coordinate gas verification and the royalty audit programs.

2. Why does MMS want daily production data on the gas volume statements to verify production reported monthly? While daily production data is easier to obtain from electronically measured data than from chart recorders, it appears that meter owners provide gas producers (lessees) a daily breakout of gas production once a month. Daily production data is the best data to use to verify gas production.

3. How will MMS verify gas that is processed before royalty is calculated? MMS will use the monthly statement that gas plant managers supply to producers instead of the gas volume statement. However, if these statements are not prepared on a daily basis for the month, MMS may ask for additional data from the lessee to verify production.

4. MMS is seeking comments concerning whether you receive monthly gas measurement statements from meter owners that show a daily summary of volumes and quality. If you do not receive the statements, please list how you audit the production records.

5. MMS is seeking comments on the applicable industry standards and practices that we incorporate and exclude. This proposed rule would require that lessees follow the standards listed in 30 CFR 250.1, Documents Incorporated by Reference. MMS published that final rule on November 26, 1996, (61 FR 60019).

6. This proposed rule would require seals only on liquid hydrocarbon royalty installations. However, MMS may also require seals on gas installations in the final rule. Please comment on this proposal.

7. MMS is also seeking comments on the type of records you keep for gas used on the lease, how you record volumes and quality, and how you measure or estimate volumes and quality.

Executive Order (E.O.) 12866

DOI has certified that this proposed rule is not a significant rule under E.O. 12866.

E.O. 12988

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

Unfunded Mandates Reform Act of 1995

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 year on State, local, and tribal governments, or the private sector.

Regulatory Flexibility Act

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

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention Desk Officer for the Department of the Interior, 725 17th Street NW, Washington, D.C. 20503 (OMB control number 1010–0051). Send a copy of your comments to the Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 20170–4817. You may obtain a copy of the proposed collection of information by contacting the Bureau's Information Collection Clearance Officer at (703) 787–1242.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The title of this collection of information is ''30 CFR 250, Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security.'' OMB previously approved it under OMB control number 1010–0051.

The collection of information consists of oil run tickets; proving and calibrations reports; measuring liquid hydrocarbons and gas; applications for surface commingling, and various recordkeeping requirements. The proposed rule would delete some recordkeeping and reporting requirements. it would add the following when required by the Regional Supervisor:

- Gas volume statements,
- Production quality data, and
- Data concerning gas lost or used on the lease.

MMS would use the information to verify production measurements.

Respondents are Federal OCS oil, gas, and sulphur lessees. MMS will receive approximately 2,300 new responses

each year. The frequency of submission varies.

MMS estimates the additional annual reporting burden as a result of this rule would be approximately 192 hours (.08 hour per response). We estimate the total annual burden to be 2,615 reporting hours and 2,429 recordkeeping hours. Based on $35 per hour, the total burden hour cost to respondents is estimated to be $176,540.

In calculating the burden, MMS assumed that respondents perform many of the requirements and maintain records in the normal course of their activities. MMS considers these to be usual and customary and did not include them in the burden estimates. Commenters are invited to provide information if they disagree with this assumption and they should tell us what are the burden hours and costs imposed by this collection of information.

MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost and

(b) Annual operation, maintenance, and purchase of services.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: Before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

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.

Takings Implication Assessment

DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

DOI determined that this rulemaking does not constitute a major Federal action significantly affecting 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, Natural gas, Petroleum, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 30, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 250 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. Subpart L is revised to read as follows:

Subpart L—Oil and Gas Production Measurement, Surface Commingling, and Security

Sec.

Subpart L—Oil and Gas Production Measurement, Surface Commingling, and Security

§ 250.180 Question Index Table

The table in this section lists questions concerning Oil and Gas Production Measurement, Surface Commingling, and Security and the location of the answers.

Frequently asked questions	CFR citation
1. What are the requirements for measuring liquid hydrocarbons?	§ 250.182 (a).
2. What are the requirements for liquid hydrocarbon royalty meters?	§ 250.182 (b).
3. What are the requirements for run tickets?	§ 250.182 (c).
4. What are the requirements for liquid hydrocarbon royalty meter provings?	§ 250.182 (d).
5. What are the requirements for a master meter and its calibration?	§ 250.182 (e).
6. What are the requirements for calibrating mechanical-displacement provers and tank provers?	§ 250.182 (f).
7. What correction factors must a lessee account for when calibrating meters with a mechanical displacement prover, tank provers or master meter?.	§ 250.182 (g).
8. What are the requirements for establishing and applying operating meter factors for liquid hydrocarbons?	§ 250.182 (h).
9. Under what circumstances does MMS consider that a liquid hydrocarbon royalty meter failed and what must a lessee do?	§ 250.182 (i).

Frequently asked questions	CFR citation
10. How must a lessee correct gross liquid hydrocarbon volumes measured under nonstandard conditions?	§ 250.182 (j).
11. What are the requirements for liquid hydrocarbon allocation meters?	§ 250.182 (k).
12. What are the requirements for tank facilities designated as a royalty point?	§ 250.182 (l).
13. To which meters do MMS requirements for gas measurement apply?	§ 250.183 (a).
14. What are the requirements for measuring gas?	§ 250.183 (b).
15. What are the requirements for gas meter calibrations?	§ 250.183 (c).
16. What must a lessee do if a gas meter is malfunctioning?	§ 250.183 (d).
17. What are the requirements when natural gas from a Federal lease is delivered to a gas plant?	§ 250.183 (e).
18. What are the requirements when commingling production at the surface?	§ 250.184 (a).
19. What are the requirements for a well test used for allocation?	§ 250.184 (b).
20. What are the requirements for site security?	§ 250.185 (a).
21. What are the requirements for using seals?	§ 250.185 (b).
22. What are the requirements for measuring gas lost or used on a lease?	§ 250.186.

§ 250.181 Definitions for subpart L.

Terms used in Subpart L have the following meaning:

Allocation meter means a meter whose volume measurement substantiates which portion of the volume measured by a royalty meter is attributable to a particular lease, unit, well, or other measurement point.

API MPMS means the American Petroleum Institute's Manual of Petroleum Measurement Standards.

British Thermal Unit (Btu) means the amount of heat needed to raise the temperature of one pound of water by 1 degree Fahrenheit (1°F) at standard atmospheric pressure.

Calibration means the adjustment or standardization of a measuring instrument to yield precise data.

Fractional Analysis means separating mixtures into identifiable components expressed in mole percent.

Gas meter means an approved meter that measures natural gas and upon which MMS bases royalty and/or allocation volumes.

Gas processing plant means an installation for processing natural gas to remove impurities and recover natural gas liquids (NGL's) and other products. The NGL's are reported as the sum of the products (ethane, propane, butane, and natural gasoline) on the report of sales and royalty remittance. Products like nitrogen, sulphur, carbon dioxide and helium are reported separately.

Gas processing plant statement means a monthly statement showing the volume and quality of the inlet gas stream and the plant products recovered during the period, volume of deductible plant fuel, and the allocation of plant products to the sources of the inlet stream.

Gas royalty meter malfunction means an error in the gas measurement device that exceeds manufacturers specifications.

Gas volume statement means a document prepared by the owner of a gas meter that identifies the volume of natural gas measured by the meter. The statement contains information such as pressure base, temperature base, and volumetric data in a thousand cubic feet (Mcf) and quality data in gross Btu's per cubic foot.

Liquid hydrocarbons (free liquids) mean a mixture of hydrocarbons produced in liquid form after passing through surface separating facilities.

Malfunction factor means a liquid hydrocarbon royalty meter factor that differs from the previous meter factor by an amount greater than 0.0025.

Natural gas means all components of a whole natural gas stream which pass a meter in vapor phase at the measurement point.

Natural gas liquids (NGL's) mean components of natural gas that are liquefied from the whole gas stream and extracted in gas processing plants.

Operating meter means a meter that is used for measurement at any time during the month. A meter must be proved or calibrated only if it is an operating meter.

Pressure base means the pressure at which gas volumes are reported. The standard pressure base for converting measured volumes to standard volumes is 14.73 pounds per square inch absolute (psia).

Prove means to determine the accuracy of a meter, usually by running a known quantity (or quantities) of hydrocarbon through the meter at a known temperature and pressure while recording the meter volume registration.

Retrograde condensate means liquid hydrocarbons that drop out of the separated gas stream at any point prior to entering a gas processing plant, but after the facility measurement point.

Royalty meter means an approved meter that measures natural gas or liquid hydrocarbons and upon which MMS bases royalty volumes.

Run ticket means the invoice for liquid hydrocarbons measured at a royalty point.

Sales meter means a meter at which custody transfer takes place (not necessarily a royalty meter).

Seal means a device or approved method used to prevent tampering with measurement facility components.

Standard conditions means 14.73 pounds per square inch absolute (psia) and 60° F.

Surface commingling means the surface mixing of production from two or more leases or units prior to measurement for royalty purposes.

Temperature base means the temperature at which gas volumes are reported. The standard temperature base for use in converting measured volumes to standard volumes is 60° F.

You or your means the lessee or contractor engaged in operations in the Outer Continental Shelf (OCS).

§ 250.182 Liquid hydrocarbon measurement.

(a) *What are the requirements for measuring liquid hydrocarbons?* Lessees must:

(1) Commence liquid hydrocarbon production or make changes to previously approved measurement procedures only after the Regional Supervisor has approved the liquid hydrocarbon application or changes to an existing approval;

(2) Use measurement equipment that will accurately measure the liquid hydrocarbons produced from a lease or unit;

(3) Use procedures and correction factors according to the applicable chapters of the API MPMS as referenced in 30 CFR 250.1 when obtaining net standard volume and associated measurement parameters; and

(4) When requested by the Regional Supervisor, determine the retrograde condensate volume and allocate it back to the individual leases and/or units and wells.

(b) *What are the requirements for liquid hydrocarbon royalty meters?* Lessees must:

(1) Ensure that the royalty meter facilities include the following components (or other MMS-approved

components) which must be compatible with their connected systems:

(i) A positive-displacement meter equipped with a nonreset totalizer;

(ii) A mechanical displacement prover, a master meter, a calibrated tank prover;

(iii) A proportional-to-flow sampling device pulsed by the meter output; and

(iv) A temperature measurement or temperature compensation device.

(2) Ensure that the royalty meter facilities accomplish the following:

(i) Prevent flow reversal through the meter;

(ii) Protect meters subjected to pressure pulsations or surges;

(iii) Prevent the meter from shock pressures greater than the maximum working pressure; and

(iv) Prevent meter bypassing.

(3) Maintain royalty meter facilities to ensure the following:

(i) Meters operate within the gravity range specified by the manufacturer;

(ii) Meters operate within the manufacturer's specifications for maximum and minimum flow rate for linear accuracy; and

(iii) Meters are reproven when changes in metering conditions affect the meters performance such as changes in pressure, temperature, density (water content), viscosity, pressure, and flow rate.

(4) Ensure that sampling devices conform to the following:

(i) The sampling point is in the flowstream immediately upstream or downstream of the meter or divert valve;

(ii) The sample container is vapor-tight and includes a mixing device to allow complete mixing of the sample before removal from the container; and

(iii) The sample probe is in the center of the flow piping in a vertical run and is located at least three pipe diameters downstream of any pipe fitting within a region of turbulent flow.

(c) *What are the requirements for run tickets?* Lessees must:

(1) Send all run tickets pulled and/or completed to the Regional Supervisor within 15 days following the end of the month;

(2) Pull a run ticket when establishing the monthly meter factor or a malfunction meter factor. Send the Regional Supervisor a copy of this run ticket; and

(3) Ensure that run tickets clearly identify all observed data, all correction factors not included in the meter factor, the net standard volume, and all calculations and factors.

(d) *What are the requirements for liquid hydrocarbon royalty meter provings*? Lessees must:

(1) Permit MMS representatives to witness regularly scheduled provings or any proving requested by the Regional Supervisor;

(2) Ensure that the integrity of the prover calibration is traceable to test measures certified by the National Institute of Standards and Technology;

(3) Prove each operating royalty meter to determine the meter factor during each month but the time between meter factor determinations must not exceed 42 days; and

(4) Submit copies of all meter proving reports for royalty meters to the Regional Supervisor monthly within 15 days after the end of the month.

(e) *What are the requirements for a master meter and its calibration*? Lessees must:

(1) Calibrate the master meter to obtain a meter factor before using it to determine operating meter factors;

(2) Use a fluid of similar gravity, viscosity, temperature, and flow rate as the liquid hydrocarbons that flow through the operating meter to calibrate the master meter;

(3) Calibrate the master meter during each month but the time between calibrations must not exceed 42 days;

(4) Calibrate the master meter by recording runs until the results of two consecutive runs (if a tank prover is used) or five out of six consecutive runs (if a mechanical-displacement prover is used) produce maximum meter factor differences of 0.0002. Lessees must use the average of the two (or the five) runs that produced acceptable results to compute the master meter factor; and

(5) Install the master meter upstream of any back-pressure or reverse flow check valves associated with the operating meter. However, you may install master meters either upstream or downstream of the operating meter.

(6) Keep a copy of the master meter proving report at your field location for 2 years.

(f) *What are the requirements for calibrating mechanical-displacement provers and tank provers*? Lessees must:

(1) Calibrate mechanical-displacement provers and tank provers at least once every 5 years according to the API MPMS as referenced in 30 CFR 250.1; and

(2) Submit a copy of each calibration report to the Regional Supervisor within 15 days after the calibration.

(g) *What correction factors must a lessee account for when calibrating meters with a mechanical-displacement prover, tank prover, or master meter*? Use the following correction factors from the API MPMS as referenced in 30 CFR 250.1:

(1) The change in prover volume due to pressure in the steel pipe (Cps);

(2) The change in volume of the test liquid with the change in temperature (Ctl);

(3) The change in prover volume due to the change in temperature (Cts); and

(4) The change in volume of the test liquid with the change in pressure (Cpl).

(h) *What are the requirements for establishing and applying operating meter factors for liquid hydrocarbons*?

(1) If you use a mechanical-displacement prover, you must record proof runs until five out of six consecutive runs produce a maximum difference between individual runs of .0005. You must use the average of the five runs to compute the meter factor.

(2) If you use a master meter, you must record proof runs until three consecutive runs produce a maximum total meter factor difference of 0.0005. The volume of each run must be at least 10 percent of the hourly rated capacity of the operating meter. You must use the average of the three runs to compute the meter factor.

(3) If you use a tank prover, you must record proof funs until two consecutive runs produce a maximum meter factor difference of .05 percent of the tank prover volume. You must use the average of the two consecutive runs to compute the meter factor.

(4) You must apply meter factors that are within tolerance starting with the date of the proving.

(i) *Under what circumstances does MMS consider that a liquid hydrocarbon royalty meter failed and what must a lessee do*?

(1) If the difference between the meter factor and the previous factor exceeds 0.0025 it is a malfunction factor and lessees must do the following:

(i) Remove the meter from service and check it for damage and/or wear;

(ii) Adjust it and/or repair it, and reprove it;

(iii) Apply the average of the malfunction factor and the previous factor to the production measured through the meter between the date of the previous factor and the date of the malfunction factor; and

(iv) Show all appropriate remarks regarding subsequent repairs and/or adjustments on the proving report.

(2) If a meter fails to register production the lessee must do the following:

(i) Remove the meter from service, repair and reprove it;

(ii) Apply the previous meter factor to the production run between the date of that factor and the date of the failure; and

(iii) Estimate unregistered production by the best possible means and report it as estimated production on the proving report.

(3) If the results of a royalty meter proving exceed the run tolerance criteria and all measures excluding the adjustment and/or repair of the meter can't bring results within tolerance the lessees must:

(i) Establish a factor using proving results made before any adjustment and/or repair of the meter; and

(ii) Treat the established factor like a malfunction factor [See paragraph (i)(1) of this section].

(j) *How must a lessee correct gross liquid hydrocarbon volumes measured under nonstandard condition?*

(1) Calculate Cpl factors into the meter factor or list and apply them on the appropriate run ticket.

(2) List the Ctl factors on the appropriate run ticket when the meter is not automatically temperature compensated.

(k) *What are the requirements for liquid hydrocarbon allocation meters?* Lessees must:

(1) Take samples continuously or daily;

(2) For turbine meters, take the sample proportional to the flow;

(3) Prove allocation meters monthly if they measure 50 or more barrels of oil per day per meter; or

(4) Prove allocation meters quarterly if they measure less than 50 barrels of oil per day per meter;

(5) Keep a copy of the proving reports at the field location for 2 years;

(6) Adjust and reprove the meter if a meter factor differs from the previous meter factor by more than 2 percent and less than 7 percent;

(7) For turbine meters, inspect the meter if a factor differs from the previous meter factor by more than 2 percent and less than 7 percent; and

(8) Repair or replace and reprove the meter if a meter factor differs from the previous meter factor by 7 percent or more.

(l) *What are the requirements for tank facilities designated as a royalty point?* Lessees must:

(1) Equip the tank with a vapor-tight thief hatch, a vent-line valve, and a fill line designed to minimize free fall and splashing;

(2) Submit a complete set of calibration charts (tank tables) to the Regional Supervisor before using the tank for measuring sales;

(3) Obtain the volume and other measurement parameters by using correction factors and procedures in the API MPMS as referenced in 30 CFR 250.1; and

(4) Submit a copy of each run ticket written from tank gaugings to the Regional Supervisor within 15 days after the end of the month.

§ 250.183 Gas measurement

(a) *To which meters do MMS requirements for gas measurement apply?* All OCS gas royalty and allocation meters.

(b) *What are the requirements for measuring gas?* Lessees must:

(1) Commence gas production or make changes to previously approved measurement procedures only after the Regional Supervisor has approved the gas measurement application or changes to an existing approval.

(2) Design, install, use, maintain, and test measurement equipment to ensure accurate and complete measurement. You must follow the recommendations in API MPMS (referenced in 30 CFR 250.1).

(3) Ensure that the measurement components are compatible with their connected systems.

(4) Equip the meter with a chart or electronic data recorder. Electronic data recorders must be capable of displaying real-time data during MMS inspections.

(5) Use continuous on-line chromatographic analyzers or sampling ports upstream or downstream of the meter. Take a sample at least once each calendar month but intervals must not exceed 42 days.

(6) Ensure that standard conditions for reporting gross heating value are at a base temperature of 60° F and at a base pressure of 14.73 pounds per square inch absolute (psia).

(7) When requested by the Regional Supervisor, submit gas volume statements for each requested month's gas sales. Show whether gas volumes and gross Btu heating value are reported at saturated or unsaturated conditions.

(8) When requested by the Regional Supervisor, provide any data necessary for gas volume and quality calculations.

(c) *What are the requirements for gas meter calibrations?* Lessees must:

(1) Calibrate meters monthly but not exceed 42 days between calibrations.

(2) Following a meter calibration, adjust the meter equipment (if necessary) by using the manufacturer's specifications.

(3) For positive displacement or turbine meters, conduct calibrations at the average hourly rate of flow since the last calibration.

(4) Retain calibration test data at the field location for 2 years and send the data to the Regional Supervisor upon request.

(5) Permit MMS representatives to witness regularly scheduled calibrations and any calibration requested by the Regional Supervisor.

(d) *What must a lessee do if a gas meter is malfunctioning?*

(1) If a gas meter is malfunctioning, adjust the meter to function properly or remove it from service and replace it.

(2) Correct the volumes to the last acceptable calibration as follows:

(i) If the duration of the error can be determined, calculate the volume adjustment for that period. The MMS does not require retroactive volume adjustments for allocation beyond 21 days; or

(ii) If the duration of the error can't be determined, apply the volume adjustment to one-half of the time elapsed since the last calibration or 21 days, whichever is less.

(e) *What are the requirements when natural gas from a Federal lease is delivered to a gas plant?*

(1) Lessees must provide the following to the Regional Supervisor upon request:

(i) The gas processing plant statement;

(ii) A gas volume statement for each of the lessee's meter facility sites that contribute natural gas to the processing plant; and

(iii) Composite fractional analyses and gross heating values.

(2) MMS may inspect the measurement and sampling equipment of natural gas processing plants that process Federal production.

§ 250.184 Surface commingling.

(a) *What are the requirements when commingling production at the surface? Lessees must:*

(1) Commence commingling of production only after the Regional Supervisor has approved the commingling and the method of measurement.

(2) Submit an application containing the following information:

(i) The method of allocation measurement and processing, if applicable;

(ii) The manner of entry into the commingled system; and

(iii) Any other information that the Regional Supervisor requests.

(3) Submit any changes to an approved commingling application to the Regional Supervisor for approval.

(4) Upon the request of the Regional Supervisor, lessees who deliver natural gas into a commingled system of both Federal and non-Federal production must provide volumetric and fractional analyses on the non-Federal gas through the designated system operator. If a lessees fails to provide that data, MMS will not permit the lessee to deliver Federal gas into the commingled system.

(b) *What are the requirements for a well test used for allocation?* Lessees must:

(1) Conduct a well test at least once every 2 months unless the Regional Supervisor approved a different frequency;

(2) Follow the well test procedures in § 250.173; and

(3) Retain the well test data at the field location for 2 years.

§ 250.185 Site Security.

(a) *What are the requirements for site security?* Lessees must:

(1) Protect Federal production against production loss or theft;

(2) Post a sign at each storage tank that MMS uses to determine royalty. The sign must contain the name of the facility operator, the size of the tank, and the tank number;

(3) Not bypass MMS-approved liquid hydrocarbon royalty meters and tanks; and

(4) Report the following to the Regional Supervisor as soon as possible, but no later than the next business day after discovery:

(i) Theft or mishandling of production;

(ii) Tampering or bypassing of meter or prover devices; and

(iii) Falsifying production measurements.

(b) *What are the requirements for using seals?* Lessees must:

(1) Seal the following components of liquid hydrocarbon royalty installations to ensure that tampering cannot occur without destroying the seal:

(i) Meter stack component connections from the base of the stack to the register;

(ii) Sampling systems including packing device, fittings, chains, sight glass, and container lid;

(iii) Temperature and gravity compensation device components;

(iv) All valves on lines leaving an oil storage tank including load-out line valves, drain-line valves, and connection-line valves between royalty and non-royalty tanks; and

(v) Any additional components required by the Regional Supervisor.

(2) Number and track the seals and keep the record at the field location for 2 years; and

(3) Make the record of seals available for MMS inspection.

§ 250.186 Measuring gas lost or used on a lease.

What are the requirements for measuring gas lost or used on a lease?

(a) Lessees must either measure or estimate the volume as required by the Regional Supervisor.

(b) If the Regional Supervisor requires you to measure the volume, document the measurement equipment used and include the volume measured.

(c) If the Regional Supervisor requires you to estimate the volume, document the estimating method and the data used and include the volume estimated.

(d) Lessees must keep the volume estimates and documentation at the field location for 2 years.

(e) If the Regional Supervisor requests, lessees must provide copies of the records.

[FR Doc. 97–4534 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA50–7123b; FRL–5692–9]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part, and disapproving in part, and taking no action in part on the Regulations of the Southwest Air Pollution Control Authority (SWAPCA) for the control of air pollution in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties, Washington, as revisions to the Washington State Implementation Plan (SIP). These revisions pertain to General Regulations for Air Pollution Sources administered by SWAPCA. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by March 28, 1997.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

Washington State Department of Ecology, P.O. Box 47600, PV–11, Olympia, WA, 98504–7600.

FOR FURTHER INFORMATION CONTACT: Wayne Elson, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1463.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the rules section of this Federal Register.

Dated: February 14, 1997.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 97–4660 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CC Docket No. 92–105; FCC 97–51]

The Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: On February 19, 1997, the Commission released a Further Notice of Proposed Rulemaking (*FNPRM*) addressing N11 codes. The FNPRM is intended to obtain comment on the technical feasibility of implementing 711 for access to telecommunications relay services (TRS) and on several other issues related to N11 code administration.

DATES: Comments must be filed on or before March 31, 1997, and reply comments must be filed on or before April 30, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Further Notice of Proposed Rulemaking in the matter of The Use of N11 Codes and Other Abbreviated Dialing

Arrangements, FCC 97–51, adopted February 18, 1997, and released February 19, 1997. The Commission concurrently released a First Report and Order in the same docket. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Analysis of Proceeding

The *FNPRM* asks for comment on the technical feasibility of implementing 711 for TRS access. The *FNPRM* also ask parties: (1) if it would be possible to develop within a reasonable time an N11 ''gateway'' offering access to multiple TRS providers; (2) whether, with such gateway access, TRS calls would still be answered within our mandatory minimum standards for TRS answer times; (3) whether such a gateway would be consistent with Section 255 of the Act; and (4) whether any other important disability services could be accessed through the same gateway. Regarding TRS, the *FNPRM* also requests comment from interested parties, particularly TRS providers, about the possibility of providing both voice and text TRS services through the same abbreviated N11 code. The *FNPRM* also asks for comment on the technical feasibility and time needed to make network changes to ensure that all telecommunications carriers have the same access that LECs have to certain N11 codes. Finally, the *FNPRM* asks for comment on the proprietary nature of N11 codes and on our proposal to transfer the administration of N11 codes at the local level from the incumbent LECs to the NANP administrator.

Ordering Clauses

It is further ordered, pursuant to Sections 1, 4(i) and (j), 201–205, 218 and 251(e)(1) of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 151(j), 201–205, 218 and 251(e)(1), that the Further Notice of Proposed Rulemaking is hereby ADOPTED.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

47 CFR Part 64

Communications common carriers, Individuals with disabilities, Telecommunications relay services, and related customer premises equipment for persons with disabilities, Telephone.

Federal Communications Commission
William F. Caton,
Acting Secretary.

[FR Doc. 97–4786 Filed 2–25–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 010897A]

RIN 0648–AE09

Atlantic Swordfish Fisheries; Notice of Availability of Amendment 1

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Highly Migratory Species Division has submitted Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public. Amendment 1 would implement limited access measures for the Atlantic swordfish fisheries.

DATES: Written comments must be received on or before April 28, 1997.

ADDRESSES: Send comments to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Requests for copies of Amendment 1, which includes an environmental assessment and a regulatory impact review, should be sent to James Chambers, Fishery Management Specialist, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James Chambers or John Kelly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the FMP and its implementing regulations found at 50 CFR part 630 and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)(16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The FMP was implemented on September 18, 1985.

If approved, Amendment 1 would redefine permits as directed or incidental, develop eligibility criteria for these permits based on historical participation, and specify rules for transferability of permits. NMFS has determined that the Atlantic swordfish fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by ICCAT. The objective of this Amendment is to take a first and significant step towards reducing fleet capacity to levels more closely aligned with resource production by implementing limited access, substantially reducing latent harvesting capacity, and implementing measures to prevent further overcapitalization while allowing traditional hand-gear fishers to participate fully as the stock recovers.

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

Dated: February 19, 1997.

Rolland A. Schmitten,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4657 Filed 2–20–97; 2:46 pm]
BILLING CODE 3510–22–F

50 CFR Part 630

[Docket No. 970206023–7023–01; I.D. 010897A]

RIN 0648–AE09

Atlantic Swordfish Fisheries; Limited Access Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement the limited access system contained in Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (FMP). If approved, Amendment 1 would establish a two-tiered permit system for the Atlantic swordfish commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of these permits. NMFS has determined that the Atlantic swordfish fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to

the total allowable catch (TAC) recommended for each member state by the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS is holding public hearings and requesting written comments from the public on this proposed rule. The objective of this amendment is to take a first and significant step to prevent further overcapitalization.

DATES: Writen comments on this proposed rule must be received on or before April 28, 1997.

ADDRESSES: Comments on this proposed rule should be sent to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Copies of Amendment 1, which includes an Environmental Assessment (EA) and Regulatory Impact Review (RIR), are available from James Chambers, Fishery Management Specialist, at the same address. The locations and dates of public hearings on the proposed rule have been published in the Federal Register (62 FR 1705). Additional public hearings may be held if needed. Comments regarding the collection-of-information requirement contained in this rule should be sent to William Hogarth at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Chambers or John Kelly, 301-713-2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic swordfish fishery is managed under the FMP for Atlantic Swordfish, developed by the South Atlantic Fishery Management Council, and its implementing regulations published September 18, 1985, and found at 50 CFR part 630 issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*); and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

The FMP included a requirement for vessel permits beginning January 1, 1986. However, to date, there have been no eligibility requirements for obtaining a swordfish permit. Accordingly, the Atlantic swordfish fishery has operated under open access.

The north Atlantic swordfish stock is depleted due to overfishing. According to the latest ICCAT stock assessment, the fishable biomass (total weight) of north Atlantic swordfish is estimated to have declined 68 percent between 1960 and 1996, and by the beginning of 1996, was estimated to be at 58 percent of that needed to produce the maximum sustainable yield (MSY). The average size of north Atlantic swordfish has declined from over 266 lb (121 kg) live weight in 1963 to 90 lb (41 kg) in 1995. According to ICCAT's data, 88 percent of the swordfish caught in 1995 by the domestic industry, and 86 percent of those landed by the international fleets, were immature. Populations of swordfish along the U.S. coast of the Atlantic Ocean and Gulf of Mexico have declined such that a historical recreational fishery and commercial harpoon fishery (dating from the 19th century) have been virtually eliminated because the large swordfish, which these handgear fisheries targeted, are now scarce.

Due to the overfished status of the north Atlantic swordfish stock, current harvest levels (estimated to be about 17,000 MT per year) are scheduled for immediate reductions. At its November 1996 meeting, ICCAT adopted reductions in the TAC for north Atlantic swordfish to 11,300 MT for 1997, 11,000 MT for 1998, and 10,700 MT for 1999. In 1997, the U.S. allocation will be 29 percent of the TAC. To comply with ICCAT's recommendations for north Atlantic swordfish, NMFS has implemented several management measures including, on June 12, 1991 (56 FR 26934), quotas and a minimum size limit and, on August 30, 1991 (56 FR 42982), a notice of control date for entry into the fishery. The August 30, 1991 control date notice announced that anyone entering the fishery after that date (the ''control date'') may not be assured of future access to the fishery if some form of limited access were implemented later.

Need for Limited Access

The Atlantic swordfish fishery is overcapitalized in that there are more vessels permitted in the fishery than are necessary or desirable to harvest the total allowable catch (TAC). At least 1,531 vessel owners are ''current permit holders,'' but only about 300 regularly land swordfish. The inactive, permitted vessels (about 1,200) represent a potential for increased overcapitalization, shortened fishing seasons, and significant economic impact if many enter the fishery.

The creation of a limited access system would be an initial step toward achieving a more reasonable balance between the harvesting capacity of the permitted fleet and the TAC. At a minimum, it would prevent further increases in the number of permits in the fisheries that target swordfish and would dramatically reduce the number of speculative permit holders (those without significant documented landings of Atlantic swordfish).

The objectives of this proposed rule are to (a) reduce the amount of latent effort in the U.S. Atlantic swordfish fishery without significantly affecting the livelihoods of those who have are substantially dependent on swordfish fisheries, (b) reduce the size of the incidental fishery over time, and (c) allow traditional handgear fishers (whose permits have lapsed due to the scarcity of large fish, which they target) to participate fully as the stock recovers. The long-term objective of the limited access program currently under development for the Atlantic swordfish fishery is to create a management system to make fleet capacity commensurate with resource productivity so as to achieve the dual goals of economic efficiency and biological conservation. The agency's long-term objective is to rebuild the stock to the level at which the maximum sustained yield will be produced at a minimum, and ultimately, to the level at which the maximum economic yield will be produced.

While limited access alone will not resolve all of the problems associated with open access fisheries (derby fishing conditions, ''the race for fish,'' market gluts), it would help prevent them from becoming more severe. A limited access system would stabilize fleet size and provide an opportunity for NMFS to collect data, conduct studies, and work cooperatively with fishery participants and other constituents to develop a more flexible, permanent effort control program in the future.

Permit Categories

NMFS proposes to implement a two-tiered commercial fishing permit system in which permits would be classified as ''directed'' or ''incidental.'' The reason for issuing two broad categories of permits is to define and regulate the directed swordfish fishery separately from commercial fisheries that target other species but take swordfish as bycatch. Only persons holding a directed fishery permit would be eligible to participate in the directed fisheries under the management measures already established, while those holding an incidental permit would be restricted to the bycatch fishery with more restrictive management measures. NMFS proposes to restrict access to both the directed

and incidental swordfish fisheries. Two types of directed permits would be issued: Longline and drift gillnet permits, and handgear (harpoon, rod and reel, and handline) permits. Only one permit would be issued to a vessel, i.e., a vessel would be issued a directed longline/drift gillnet, directed handgear, or incidental permit. No combination of permits would be issued.

Eligibility Criteria

Only persons or entities that held a swordfish permit at any time from July 1, 1994, through December 31, 1995, who have documented landings that meet at least the directed or incidental threshold levels of historical participation in the swordfish fishery, and who own a swordfish-permitted vessel at the time of publication of the final rule would receive a directed longline/drift gillnet commercial permit or an incidental commercial permit. Separate criteria would be established for former harpooners to be issued a directed handgear commercial permit for use only with handgear.

Specific eligibility criteria are proposed because the majority of existing swordfish permit holders have not participated in the fishery (have not had significant reported landings of swordfish). If all current swordfish permit holders were to be allowed future participation in the commercial swordfish fishery, there would be a potential to reach or even to exceed greatly the TAC in a short time.

For the directed longline and drift gillnet fisheries, NMFS proposes a minimum requirement of having landed at least 18 swordfish per year for any 2 years between January 1, 1987, and June 30, 1995 (which is equivalent to having landed sufficient swordfish each year on average to earn $5,000 per year in gross revenue). NMFS estimates that 231 vessels would be eligible for these directed swordfish permits.

NMFS proposes to issue directed fishery handgear permits only to those who (1) have previously been issued swordfish permits for use primarily with harpoon gear or (2) have documented landings of swordfish with handgear as evidenced by logbook records; official, verifiable sales slips or receipts from registered dealers; or state landings records. The number of vessel owners that would be eligible is estimated to be about 40.

Under the eligibility criteria proposed for longline and drift gillnet gear types, few (if any) former harpooners could qualify because their landings were made before 1987 when mandatory reporting began and because most have let their permits lapse because of the reduced abundance of large swordfish, which they target.

For the incidental fishery, NMFS proposes a minimum landings threshold of nine swordfish between January 1, 1987, and June 30, 1995, and an earned income requirement of $20,000 or more than half of one's earned income from commercial fishing or charter or headboat operations during 1 of the last 3 years. The earned income requirement is intended to limit the incidental fishery to bona fide commercial fishers who target other species but catch swordfish as bycatch. NMFS estimates that 134 vessels would be eligible for incidental swordfish permits under the preferred alternative.

It is considered that catch histories belong to the current permit holders rather than to vessels (i.e., if a swordfish permit holder sells one vessel and buys another, he or she retains the history of the vessel sold and does not acquire the history of the vessel purchased). Thus, it is considered that persons or entities purchasing existing swordfish vessels have not also purchased that vessel's catch history (since the fishery is currently open access, it would be imprudent for someone to pay money for a catch history from which he or she may never benefit). However, several vessels were purchased after the control date (August 30, 1991) with stipulations that the catch history of the purchased vessel was purchased as well. Accordingly, NMFS has decided to accept legal documentation of transfers of catch histories in the determination of eligibility. If a vessel was sold after the control date and its landings history was included specifically in the written sales agreement, such landings would accrue to the purchaser (and no longer to the seller) for purposes of qualifying for a directed or incidental permit under the proposed limited access system.

Permit Process

NMFS would identify and notify all current permit holders of their eligibility status for the directed or incidental swordfish fishery after analysis based on the established eligibility criteria.

Upon receipt of this initial notification, eligible permit holders may submit an application for a directed or incidental fishery permit. If a permit holder is informed that he or she does not qualify for a permit, but he or she believes that there is credible evidence to the contrary, the permit holder may apply for a permit and provide the appropriate documentation. NMFS would then evaluate all applications, and any accompanying documentation, and notify the applicant of its decision either to accept or deny the permit application.

If the permit application is denied, the applicant may appeal within 90 days of receipt of the notice of denial. Provisional directed or incidental fishery permits, as appropriate, would be issued, pending the outcome of an appeal, until the final decision has been rendered. All appeal decision letters would be mailed via certified mail. If the appeal is denied, provisional permits would become invalid 5 days after the receipt of the notice of denial. If the appeal is approved, provisional permits would become invalid upon receipt of the appropriate permit.

Only owners of permitted vessels that were permitted at any time from July 1, 1994, through December 31, 1995, would be considered for appeal. All appeals would need to be made in writing. To appeal, the applicant would complete an appeal cover sheet with the name, affiliation (if any), address, and telephone number of the applicant. Additional pages and documentation could be attached, as necessary.

The sole ground for appeal would be that NMFS used incorrect or incomplete landings data in the eligibility analysis. No other ground would be considered. Valid documentation of landings covering the eligibility period would be required for consideration of an appeal. Documentation that would be considered in support of an appeal from fishers who believe they qualify for a directed or incidental fishery permit would be restricted to official NMFS logbook records that have been submitted to NMFS prior to August 30, 1995 (60 days after the cutoff date for eligible landings); official, verifiable sales slips or receipts from registered dealers; and state landings records. Dealer sales slips or receipts would have to show definitively the species and the vessel's name or other traceable indication of the harvesting vessel. Dealer records would have to include a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

While photocopies would be acceptable for initial submission, NMFS might request originals at a later date, which would be returned to the applicant via certified mail. Any submitted materials of questionable authenticity would be referred for investigation to NMFS' Office of Enforcement.

NMFS would designate appeals officers who would be NOAA employees. The appeals officers would individually review cases but would confer regularly to ensure consistency.

The appeals officers would review appeals for no more than 30 days before making a recommendation to the Director of the Office of Sustainable Fisheries (Director). The Director would render the final decision for the Department of Commerce. All denial letters would be sent by certified mail with return receipt so that NMFS would know when letters were received by permit holders.

Restrictions on Transfer of Permits

NMFS recognizes that vessels may sink or deteriorate beyond repair, and vessel owners may have valid reasons for wishing to exit the fishery. NMFS proposes to create a system in which directed commercial permits would be transferable with the sale of the permitted vessel, or to a vessel of similar harvesting capacity, or to a replacement vessel owned or purchased by the original permittee, but not under any other circumstances. Such transfers would be subject to upgrading restrictions (defined in the next section). Incidental permits would not be transferable. Directed handgear permits would be transferable, but for use with only handgear. NMFS recognizes that the same factors present in the directed fishery (vessel sinking or deterioration, disability, retirement) would also be present in the incidental fishery and that non-transferability of incidental permits would eventually result in the elimination of the incidental fishery through attrition. Prohibiting transferability of incidental permits would slow the growth of fishing effort in the limited access fishery.

In years after 1997, the eligibility criteria to which initial limited access permit holders are subject would not apply. In other words, transferees/buyers and holders of limited access vessel permits would not be required to meet the initial limited access eligibility criteria (i.e., having held a swordfish permit at any time from July 1, 1994, through December 31, 1995; having met the landings thresholds; and owning a vessel at the time of publication of the final rule).

Restrictions on Vessel Upgrading

NMFS proposes to require that any vessel to which a permit is transferred would be defined as the ''new'' vessel and be required to have the same or less gross registered tonnage and registered length as the originally permitted vessel. This restriction would apply to ''replacement vessels,'' or those vessels acquired by the original permittee to replace originally permitted vessels, and to ''new vessels,'' or those vessels not originally permitted but to which a permit has been transferred after the original permittee has sold the permit. This restriction would also apply to the refurbishment of existing permitted vessels.

Ownership Limits

No one person or entity may own or control more than 5 percent of the permitted vessels in the directed fishery. This would prevent significant consolidation and maintain the historically predominant individual owner/operator character of the swordfish fishery.

Incidental Harvest Limits

Without limits on the harvest of bycatch, the potential would exist for the incidental fishery to target and harvest significant numbers of swordfish. This would defeat the purpose of the two-tiered commercial permit system. For these reasons, NMFS proposes to retain the existing harvest limit for the incidental fishery at a maximum of five swordfish per trip for squid/mackerel/butterfish otter trawl vessels and two per trip for all other gear types. Fishers with directed longline or drift gillnet permits would be limited to five swordfish per trip during a closure of the directed fishery. The current limit is 15 swordfish per trip, which is considered excessive in view of the depleted status of the resource. A lower bycatch limit would provide an incentive to avoid swordfish.

Handgear Set-aside

A quota equivalent to 2 percent of the directed fishery quota would be set-aside for holders of the directed handgear permit during each semiannual period. This percentage would be increased by subsequent regulation as the north Atlantic swordfish stock recovers.

Fees

The Regional Administrator may charge a fee to recover the administrative expenses of permit issuance and appeals. The amount of the fee would be determined, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee would not exceed such costs and would be specified with each application form. The appropriate fee would be required to accompany each application. Failure to pay the fee would preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded would invalidate any permit.

Classification

This proposed rule is published under authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq*., and ATCA, 16 U.S.C. 971 *et seq*. The Assistant Administrator has preliminarily determined that the regulations contained in this proposed rule are necessary for management of the Atlantic swordfish fishery. NMFS prepared a draft EA for this proposed rule with a preliminary finding of no significant impact on the human environment. The biological opinion issued on September 1, 1995, indicated that the level of impact from the longline and drift gillnet fisheries for Atlantic swordfish was not likely to jeopardize the continued existence of any threatened or endangered species or marine mammal populations. This action to limit access is under review to determine if any environmental impacts would alter that opinion.

NMFS reinitiated formal consultation for all highly migratory species commercial fisheries on September 25, 1996, under section 7 of the Endangered Species Act. This consultation will consider new information concerning the status of the northern right whale. NMFS has determined that proceeding with this rule, pending completion of that consultation, will not result in any irreversible and irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. This rule would reduce the number of permits in the Atlantic swordfish commercial fishery and freeze the harvesting capacity of the fleet at current levels, thereby preventing further overcapitalization and derby fishing conditions and would likely reduce interaction rates with such protected species.

A draft RIR was prepared with a preliminary finding of no significant economic impact. The RIR provides further discussion of the economic effects of the proposed rule.

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of this proposed rule is to rationalize current harvesting capacity with total allowable catch and substantially reduce latent effort without significantly

altering the status quo in the Atlantic swordfish fishery. Practically all current participants of the swordfish fishery readily fall within the definition of a small business. The proposed rule will affect all current permit holders (1,531) in the Atlantic swordfish fishery. However, it will not have a ''significant economic effect'' or adversely affect a ''substantial number'' of those engaged in the fishery. In general, a substantial number of small entities is defined by the Department of Commerce as more than 20 percent of those engaged in the fishery.

Only about 300 permitted vessels catch at least one swordfish each year and together they constitute the Atlantic swordfish fishery. Few, if any, fishers who are considered to be substantially dependent on the fishery would be excluded under the proposed limited access regulation. All longline and drift gillnet vessel owners who can demonstrate a history of landings at a minimum threshold of 18 swordfish per year during the 2-year qualifying period would be eligible for a directed permit (about 231). Only the most recent entrants to the fishery and those without at least a minimal record of landings over two years would be excluded. Historical participants, particularly about 40 New England-based harpooners who have let their permits lapse and would otherwise be excluded from the directed fishery, could be issued a directed handgear permit allowing them to participate in any potential recovery of the stock.

Speculative permit holders (numbering 1,231), by definition, have not participated in the commercial swordfish fishery at all or have not been substantially dependent on the fishery for a period of years. The incidental bycatch limits continue to provide for speculative commercial fishers to land some swordfish; accordingly, their annual gross revenues should not decrease substantially. Incidental permits are also available to those who have participated in the fishery over a period of years but whose landings were at such low levels that they could not qualify for a directed fishery permit. Incidental landing limits (two swordfish per trip) should be comparable to their previous catch rates, thus their annual gross revenue should also not be affected.

Therefore, redefining commercial swordfish permits as directed and incidental as proposed will not have a significant economic impact on a majority of those engaged in the Atlantic swordfish fishery in terms of fishers' annual gross revenues. The substantive changes proposed primarily affect the applicability of permitting requirements. The need for these changes is explained in the preamble to the proposed rule.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with the collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This proposed rule contains collections of information subject to the PRA. Revisions are proposed to the vessel permitting process, but these are minor and not expected to alter the estimated response time of 20 minutes. Permit requirements have been approved by OMB under Control Number 0648–0205. Reporting requirements remain unchanged from those approved by OMB under Control Number 0648–0016, with an estimated response time of 15 minutes per logbook report. The appeals procedure constitutes a new collection-of-information requirement and it has been submitted to OMB for approval. An appeal of a permit denial is estimated to take 1.5 hours, including the time to gather records, make copies, and mail documents to NMFS. Comments regarding: (1) The accuracy of this burden estimate (including hours and cost); (2) whether the proposed collection of information is necessary for the proper performance of NMFS' functions, including whether the sought information has practical utility; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) 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; and (5) any other aspects of information collection should be sent to OMB and NMFS (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: February 19, 1997.

Rolland Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

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

2. In § 630.2, the definitions for ''Director'' and ''Handgear'' are added, in alphabetical order, and the definition of ''Recreational fishery'' is revised to read as follows:

§ 630.2 Definitions.

* * * * *

Director means the Director, Office of Sustainable Fisheries F/SF, NMFS, or a designee.

* * * * *

Handgear means harpoon, rod and reel, and handline fishing gear.

* * * * *

Recreational fishery means all activities involved in the catching of swordfish from a vessel, having only rod and reel or handline gear on board, intended solely for sport or pleasure with no subsequent sale or commercial barter of any of the catch.

* * * * *

3. In § 630.4, paragraphs (a), (b), the first sentence of (d), and (e) through (g) are revised and paragraph (c)(1) is amended by adding a new first sentence to read as follows:

§ 630.4 Permits and fees.

(a) *Vessel permits*—(1) *General.* (i) Except as provided by paragraph (a)(1)(ii) of this section, a valid Federal permit issued under this paragraph must be obtained and carried on board at all times by the owner of the United States that fishes for, possesses, or lands Atlantic swordfish from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, the management unit; or that takes such swordfish as bycatch, whether or not retained.

(ii) The owner of a vessel that fishes for or possesses swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N latitude in the recreational fishery is exempt from the requirement to have a permit.

(2) *Limited access eligibility in 1997.* NMFS will issue three types of limited access permits for Atlantic swordfish vessels: Directed longline and drift gillnet permits, directed handgear permits, and incidental permits. To be eligible to obtain a vessel permit in 1997—

(i) For use with longline or drift gillnet gear in the directed swordfish fishery, a vessel owner must have held a valid Federal commercial swordfish permit at any time during the period July 1, 1994, through December 31, 1995; met the landings criteria specified in paragraph (a)(3)(i) of this section; and own a vessel with a valid swordfish permit on February 26, 1997.

(ii) For use with handgear (harpoon, rod and reel, or handline) but having no longline or drift gillnet gear on board, a vessel owner must have previously been issued a swordfish permit for use primarily with harpoon gear or have documented landings of swordfish with handgear as evidenced by official NMFS

logbook records; official, verifiable sales slips or receipts from registered dealers; and state landings records.

(iii) For use by vessels targeting species other than swordfish, but catching limited numbers of swordfish incidentally, a vessel owner must have earned at least $20,000 or more than half of his or her earned income from commercial fishing or from charter or headboat operations during 1 of the last 3 years; held a valid Federal commercial swordfish permit during the period July 1, 1994, through December 31, 1995; met the landings criteria specified in paragraph (a)(3)(ii) of this section; and own a vessel with a valid swordfish permit on Febraury 26, 1997. A statement attesting to having met the earned income requirement must be furnished with an application for an incidental swordfish permit.

(3) *Landings Criteria.* (i) Directed permits for use with longline or drift gillnet gear will be issued only to eligible permit holders who have documented landings of at least 18 swordfish per year for any 2 years between January 1, 1987, and June 30, 1995.

(ii) Incidental permits will be issued only to eligible permit holders who have documented landings of nine swordfish during the period January 1, 1987, to June 30, 1995.

(4) *Eligibility in 1998 and thereafter.* To be eligible for a swordfish permit for use with longline or drift gillnet gear in years after 1997, a vessel owner must have been issued a permit for the directed longline or drift gillnet fishery for the preceding year, or the vessel must be replacing a vessel that has been retired from the directed longline or drift gillnet fishery and had been issued a permit for the preceding year, and the vessel and owner must meet the criteria set forth in paragraphs (b)(5) and (g). A vessel owner desiring to apply for a directed handgear permit must meet the eligibility criteria specified at paragraph (a)(2)(ii) of this section; handgear permits are renewable annually. If more than one vessel owner claims eligibility to apply for a limited access Atlantic swordfish vessel permit based on one vessel's fishing and permit history after 1997, NMFS shall determine who is entitled to qualify for the limited access Atlantic swordfish vessel permit according to paragraph (g)(3) of this section.

(5) *Notification of eligibility for 1997.* (i) NMFS will attempt to notify all commercial swordfish permit holders (and former permit holders that used harpoon gear) of their eligibility for a directed or incidental limited access Atlantic swordfish vessel permit, based on the requirements contained in paragraph (a)(2) of this section. Upon receipt of this initial notification, eligible permit holders may submit an application for the appropriate permit following procedures described in paragraph (b) of this section.

(ii) If an owner has been notified that the vessel is not eligible for a limited access Atlantic swordfish vessel permit, and the vessel owner can provide credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for the appropriate permit by submitting the documentation required under paragraph (a)(8) of this section.

(6) If, based on the documentation supplied with the application, NMFS determines that the vessel meets the eligibility criteria, the appropriate limited access permit will be issued.

(7) *Application denial.* If, based on the documentation supplied with the application, NMFS determines that the vessel does not meet the eligibility criteria specified in paragraphs (a)(2) and (a)(3) of this section or the conditions specified in paragraphs (a)(5) and (e) of this section, the limited access permit application will be denied. Letters of denial will be sent via certified mail.

(8) *Appeals.* (i) Any applicant denied a limited access permit for Atlantic swordfish vessels may appeal the denial to NMFS within 90 days of the notice of denial. The sole ground for appeal is that NMFS erred in its determination of eligibility on the basis of incorrect or incomplete data. No other grounds will be considered. Valid documentation of landings specified in paragraph (a)(3) of this section covering the eligibility period must be provided by the applicant for NMFS to consider an appeal. Photocopies will be acceptable for initial submission. NMFS may request originals at a later date, which would be returned to the applicant via certified mail. Any such appeal must be in writing. Documentation that is of questionable authenticity will be referred for investigation to NMFS' Office of Enforcement.

(ii) The only landings documentation that will be considered in support of an application or appeal are official NMFS logbook records that were submitted to NMFS prior to August 30, 1995; state landings records; and official, verifiable sales slips or receipts from registered dealers. Dealer sales slips and receipts must definitively show the species landed and vessel's name or other traceable information for the harvesting vessel and must include a sworn affidavit by the dealer confirming the accuracy and authenticity of the records.

(iii) The Director shall issue a provisional permit, which shall be valid for the pendency of the appeal, to a vessel and owner for which an appeal has been initiated. The provisional permit shall be valid only for use with the gear appropriate to the category of permit the appellant is seeking. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The provisional permit must be carried on board the vessel while participating in the Atlantic swordfish fishery and is not transferable.

(iv) NMFS will appoint appeals officers who will review the written materials for no more than 30 days before making a recommendation to the Director.

(v) Upon receiving the findings and a recommendation, the Director will issue a final decision on the appeal. The Director's decision is the final administrative action of the Department of Commerce.

(vi) The Director shall send letters of approval or denial of appeals to the vessel owners. All appeal decision letters will be mailed via certified mail. If the appeal is denied, provisional permits will become invalid 5 days after receipt of the notice of denial. If the appeal is approved, provisional permits will become invalid upon receipt of the appropriate permit.

(b) *Application for a limited access vessel permit.* (1) In the year 1997, an initial application for a limited access vessel permit must be submitted and signed by the owner (in the case of a corporation, the qualifying officer or shareholder; in the case of a partnership, the qualifying general partner) of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Permit application forms are available from the Regional Director. An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name, official number, registered gross tonnage, and registered length.

(iii) Name, mailing address including ZIP code, telephone number, and social security number, and date of birth of the owner (if the owner is a corporation/partnership, in lieu of the social security number, provide the employer identification number, if one has been

assigned by the Internal Revenue Service (IRS), and, in lieu of the date of birth, provide the date the corporation/partnership was formed).

(iv) Information concerning vessel, gear used, fishing areas, and fisheries vessel is used in, as requested by the Regional Director and included on the application form.

(v) If a directed handgear permit is being sought, indication of the year a permit was issued for use primarily with harpoon gear, or if issued prior to 1984, a copy of the permit issued, or valid documentation of landings of swordfish with handgear. Valid documentation that will be considered in support of an application for a directed handgear permit are official NMFS logbook records; official, verifiable sales slips or receipts from registered dealers; or state landings records.

(vi) If an incidental swordfish permit is being sought, a sworn statement by the applicant certifying that, during 1 of the 3 calendar years preceding the application:

(A) More than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or from charter or headboat operations; or

(B) His or her gross sales of fish were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than $20,000.

(vii) A sworn statement that the applicant agrees to the conditions specified in paragraph (a)(5) of this section.

(viii) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Administrator and included on the application form.

(ix) The Regional Administrator may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(1)(vi) of this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (i) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules will be treated as confidential.

(2) In years after 1997, a limited access permit holder may apply for a limited access permit renewal, provided that the initial information under which the permit holder qualified for a limited access permit has not changed. Limited access vessel permits must be renewed annually and renewal applications must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Only holders of valid limited access permits in the preceding year are eligible for a renewal of their limited access permits.

(3) In years after 1997, an application for permit transfer of a directed limited access vessel permit to a new vessel and/or owner will be authorized, subject to transfer and upgrading restrictions specified in § 630.4 (g)(1) through (g)(3) and ownership limits set forth in § 630.4 (b)(5). Incidental limited access permits are not transferable or assignable. All other requirements and restrictions specified in this part apply to transferred limited access permits and permit holders.

(4) A limited access vessel permit for 1997 will not be issued unless an application for such permit is received by NMFS on or before November 30, 1997.

(5) No person or entity may own or control more than 5 percent of the vessels in the limited access Atlantic swordfish directed fishery.

(c) *Application for an annual dealer permit.* (1) A dealer who receives swordfish harvested or possessed by a vessel of the United States must have an valid annual dealer permit issued under this part.* * *

* * * * *

(d) *Fees.* A fee is charged for each limited access vessel permit issued under paragraph (a) of this section, for each appeal under paragraph (b) of this section, and for each annual dealer permit issued under paragraph (c) of this section.

(e) *Issuance*—(1) *Limited access vessel permits.* Except as provided in subpart D of 15 CFR part 904 and under paragraphs (a)(7) and (a)(8) of this section, the Regional Administrator shall issue a Federal limited access Atlantic swordfish vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 630.5;

(ii) The application was not received by NMFS by the deadlines set forth in paragraph (b)(4) of this section;

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (a)(2) of this section; or

(iv) The applicant has failed to meet any other application requirements stated in this part.

(2) *Dealer permits.* The Regional Administrator will issue a dealer permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 630.5(a) or § 630.5(b).

(3) *Incomplete applications.* Upon receipt of an incomplete application, the Regional Administrator will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 90 days of the date of the Regional Administrator's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it, and the conditions accepted upon its issuance remain in effect for that period, unless the vessel is retired from the swordfish fishery or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* (1) Directed limited access permits are transferable to a new vessel and/or owner or to a replacement vessel owned or purchased by the original permittee but not under any other circumstances. Such transfers are subject to requirements specified in paragraph (g)(2) of this section. Incidental permits are not transferable or assignable; incidental permits are valid only for the vessel and owner of original issuance. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of the bill of sale.

(2) Transfer of directed limited access permits is authorized only for new or replacement vessels not exceeding the gross registered tonnage and registered length as the originally permitted vessel.

(3) The fishing and permit history of a vessel is presumed to be retained by the original permit holder whenever the vessel is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is transferring/selling the vessel's fishing and permit history.

* * * * *

4. In § 630.7, paragraph (bb) is added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(bb) Aboard a vessel for which a directed swordfish handgear permit has been issued under § 630.4, retain or possess swordfish taken with gear other than harpoon, rod and reel, or handline and or to have longline or drift gillnet gear on board. 5. Section 630.22 is revised to read as follows:

§ 630.22 Gear Restrictions.

(a) *Drift gillnet.* A drift gillnet with a total length of 2.5 km or more may not be used to fish for swordfish. A vessel using or having aboard a drift gillnet with a total length of 2.5 km or more may not possess a swordfish.

(b) *Handgear.* A vessel for which a directed swordfish handgear permit has been issued under § 630.4 may retain or possess swordfish taken only with harpoon, rod and reel, or handline and must not have longline or drift gillnet gear on board.

6. In § 630.24, paragraph (a) is revised and paragraph (b)(1)(iii) is added to read as follows:

§ 630.24 Quotas.

(a) *Applicability.* A swordfish harvested from the North Atlantic swordfish stock by a vessel of the United States in other than the recreational fishery is counted against the directed fishery gear quota or the bycatch quota. A swordfish harvested commercially by longline, drift gillnet, harpoon, rod and reel or handline and landed before the effective date of a closure for that gear, done pursuant to § 630.25(a)(1), is counted against the applicable directed fishery gear quota. After a gear closure, a swordfish landed by a vessel using or possessing gear for which bycatch is allowed under § 630.25(c) is counted against the bycatch allocation specified in paragraph (c) of this section. Notwithstanding the above, a swordfish harvested by a vessel using or possessing gear other than longline, drift gillnet, harpoon, rod and reel or handline is counted against the bycatch quota specified in paragraph (c) of this section at all times.

(b) * * *

(1) * * *

(iii) A quota equivalent to 2 percent of the directed fishery quota will be set-aside for holders of the directed handgear permit during each semiannual period. Any unused portion of the set-aside quota will be returned to the directed fishery allocation by the end of September (the end of the handgear season) of each year.

* * * * *

7. In § 630.25, the first sentence in paragraph (c)(2)(ii) is amended by removing the numeral ''15'' and by adding the numeral ''5'' in its place, and paragraph (d) introductory text is revised to read as follows:

§ 630.25 Closures and bycatch limits.

* * * * *

(d) *Bycatch limits in the non-directed fishery.* Aboard a vessel using or having aboard gear other than longline, drift gillnet, harpoon, rod and reel or handline, other than in the recreational fishery—

* * * * *

[FR Doc. 97–4658 Filed 2–21–97; 12:08 pm]

BILLING CODE 3510–22–F

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50 CFR Part 678

[I.D. 121196A]

Atlantic Shark Fisheries; Limited Access Program; Extension of Comment Period

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

ACTION: Extension of comment period.

SUMMARY: NMFS extends the comment period for a proposed rule and Amendment 1 to the Fishery Management Plan for Atlantic Sharks (FMP) to implement the limited access system. The proposed rule was published in the Federal Register on December 27, 1996. The proposed rule would establish a two-tiered permit system for the Atlantic shark commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits.

DATES: Written comments on the proposed rule must be received on or before April 28, 1997.

ADDRESSES: Written comments should be sent to William T. Hogarth, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: John Kelly or Margo Schulze at 301-713-2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: NMFS has received requests from the affected public that more time is necessary to submit their comments on the Atlantic shark fishery proposed rule and FMP amendment to implement limited access (61 FR 68202, December 27, 1996). The extension in comment period will ensure that this proposed rule can be examined in conjunction with the proposed rule for limited access in the swordfish fishery, which is being published on the same date as this notice. The public has informed NMFS that it is essential to examine both proposals simultaneously in order to determine the net effect of the two proposed limited access systems.

The proposed rule, as published, would establish a two-tiered permit system for the Atlantic shark commercial fishery, set forth eligibility criteria for these permits based on historical participation, and limit the transferability of such permits. NMFS has determined that the Atlantic shark fishery is overfished and overcapitalized, with an excessive number of permitted vessels relative to the harvest level prescribed by the recovery plan.

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

Dated: February 19, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–4656 Filed 2–20–97; 5:05 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 38
Wednesday, February 26, 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

National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of Solicitation of Advisory Board Recommendations.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the United States Department of Agriculture announces a solicitation of the National Agricultural Research, Extension, Education, and Economics Advisory Board members for recommendations on the reauthorization of the Title VIII—Research, Extension, and Education of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act).

DATE: Deadline for Advisory Board Comments, February 27, 1997.

Comments: The public may file written comments before or after the **DATE** above with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, REE Office of the Advisory Board, Room 3918 South, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684; Fax: 202–720–6199.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board has been asked by USDA to give general comments on some or all of the issues provided below regarding reauthorization of the Research, Extension, and Education Title.

Recurring Questions

(1) What is the appropriate mix of funding among intramural funds, formula funds, competitive grants, and special grants?

(2) Is stakeholder input into research and extension priority setting working?

(3) What is the role of the university system in terms of ARS agenda?

(4) What is the role of the Federal Government?

(5) What are the priorities for the Extension Service?

(6) What is the appropriate role for Special Grants?

Context for Research Title Reauthorization

Many changes have taken place in the agricultural sector. The FAIR Act of 1996 provides the following changes:

(1) Contract payment provisions in lieu of traditional support programs,

(2) A deregulated domestic economy—U.S. ratification of GATT means producers now compete in a deregulated global economy as well, and

(3) Significant policy decisions affecting natural resources & the environment.

Principles Guiding USDA's Approach to Research Title Reauthorization

(1) Use existing legislative & administrative authorities whenever possible.

(2) Improve efficiency throughout the research system—and re-invest in REE research, education, and extension programs.

(3) Encourage multi-functional, multi-regional, and multi-institutional activities to achieve maximum leverage of federal, state, and local dollars.

(4) Support a range of funding mechanisms and the current structure of intramural and extramural research. Must maintain long-term high-risk research as well as shorter term investigator-initiated research.

(5) Support the use of formula funds for research and extension activities at the land-grant universities, while providing greater accountability.

(6) Support merit review with peer evaluation in all research programs with competitively-awarded programs, as appropriate. We will improve merit review and peer evaluation in the intramural programs.

(7) Value an active federal-state-local partnership in setting priorities, conducting the work, and evaluating the results, as is consistent with Administration's position on states' roles. USDA will work in partnership with state and local entities where we have concurrent jurisdiction and build better accountability.

(8) Strengthen public sector/private sector partnerships.

(9) Be responsive to national and regional needs as the first guideline in priority setting.

(10) Improve communication with the public.

(11) Overarching Principle: Work to maintain world leadership in agricultural science and education.

Comments on the above issues will be consolidated by the Office of the Advisory Board at the direction of the Executive Committee and used in a statement of recommendations to the Secretary of Agriculture on Title VIII reauthorization.

Done at Washington, DC this 21st day of February, 1997.

Bob Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–4823 Filed 2–25–97; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Revised Land and Resource Management Plans for Some National Forest System Lands in Nebraska, North Dakota, South Dakota, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement in conjunction with the revision of land and resource management plans for several National Grasslands (NG) and Forests (NF) on the Northern Great Plains.

The ''planning area'' includes these National Forest System lands:

Administrative unit	National grassland/forest	State	Counties
Cluster NF	Little Missouri NG	ND	Billings, Dunn, Golden, Valley, McHenry, McKenzie, Slope.
	Cedar River NG	ND	Grant, Sioux.
	Sheyenne NG	ND	Ransom, Richland.
	Grand River NG	SD	Corson, Perkins.
Nebraska NF	Oglala NG	NE	Dawes, Sioux.
	Nebraska NF	NE	Blaine, Dawes, Sioux, Thomas.
	Samuel R. McKelvie NF	NE	Cherry.
	Buffalo Gap NG	SD	Custer, Fall River, Jackson, Pennington.
	Fort Pierre NG	SD	Jones, Lyman, Stanley.
Medicine Bow-Routt NF	Thunder Basin NG	WY	Campbell, Converse, Crook, Niobrara, Weston.

SUMMARY: This planning effort is called the ''Northern Great Plains Management Plans Revisions.'' Land and Resource Management Plans (hereafter referred to as Management Plan or Plans) will be prepared for each participating administrative unit, while one environmental impact statement for all affected units will be issued.

This notice describes the specific portions of the current Management Plans to be revised, environmental issues considered in the revisions, estimated dates for filing the environmental impact statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information.

DATES: Comments concerning the scope of the analysis should be received in writing by July 31, 1997. The agency expects to file a draft environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public comment in June 1998. The agency expects to file the final environmental impact statement in May 1999.

ADDRESS: Send written comments to: Dave Cawrse, Team Leader, Northern Great Plains Planning Team, USDA Forest Service, 125 North Main Street, Chadron, NE 69337.

FOR FURTHER INFORMATION CONTACT: Dave Cawrse, Planning Team Leader, (308) 432–0300.

RESPONSIBLE OFFICIALS: Hal Salwasser, Northern Regional Forester at 200 East Broadway, Missoula, MT 59807; and Elizabeth Estill, Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: Pursuant to Part 36 Code of Federal Regulation (CFR) 219.10 (g), the Regional Foresters for the Northern and Rocky Mountain Regions give notice of the agency's intent to prepare an environmental impact statement for the revision effort described above. According to 36 CFR 219.10 (g), land and resource management plans are ordinarily revised on a 10- to 15-year cycle. The existing Management Plans were approved as follows:

Custer National Forest—June 10, 1987;
Medicine Bow-Routt National Forest—November 20, 1985;
Nebraska National Forest—December 14, 1984.

The Regional Foresters give notice that they are beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analyses and contribute to the final decisions. One environmental impact statement will be prepared. Separate decisions, documented in Records of Decision, will be issued for each administrative unit. The combined revision effort makes sense because of common issues and concerns, and similar ecological landscapes. This effort will enable the administrative units to share assessments, plan-related analyses, and resource expertise, and will reduce costs.

Opportunities will be provided to discuss openly with the public the alternatives to be developed, which can potentially replace the existing Management Plans. The public is invited to discuss and help define the range of alternatives to be considered in the environmental impact statement. Forest Service officials will lead these discussions, helping to describe the preliminary alternatives brought forward by the agency. These officials will also explain the environmental analysis process and the disclosures of that analysis, which will be available for public review. Written comments concerning the range of alternatives will be encouraged.

Management plans describe the intended management of National Grasslands and Forests. Agency decisions in these plans will do the following things:

* Establish multiple-use goals and objectives (36 CFR 219.11);
* Establish grassland and forestwide management requirements (standards and guidelines) to fulfill the requirements of 16 U.S.C. 1604 applying to future activities (resource integration requirements, 36 CFR 219.13 to 219.27);
* Establish management areas and management area direction (management area prescriptions) applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11 (c);
* Establish monitoring and evaluation requirements (36 CFR 219.11 (d));
* Determine suitability and potential capability of lands for producing forage for grazing animals and for providing habitat for management indicator species (36 CFR 219.20), designate lands not suited for timber production, and, where applicable, establish allowable timber sale quantity (36 CFR 219.14, 219.15, and 219.21);
* Where applicable, designate those lands administratively available for oil and gas leasing, and when appropriate, authorize the Bureau of Land Management to offer specific lands for leasing (36 CFR 228.102 (d) and (e));
* Where applicable, recommend Wild and Scenic River designations in accordance with 16 U.S.C. 1274; and
* Where applicable, recommend non-Wilderness allocations or Wilderness recommendations for roadless areas (36 CFR 219.17).

The authorization of project level activities within the planning area occurs through project decision-making, the second stage of forest and grassland planning. Project level decisions must comply with National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Management Plan.

Need for Changes in the Current Management Plans

Nearly a decade or more has lapsed since the current Management Plans were approved. Experience has shown the need for changes in management

direction for some resources or programs. Several sources have highlighted needed changes in the current Management Plans. In brief, these sources include:

* New issues and changing public values identified through public interaction;

* New information and knowledge gained through scientific research and effectiveness monitoring;

* Management concerns derived through implementation experience and insight into relationships between prairie and forest vegetation and other resources and better ways of accomplishing desired conditions.

In addition to changing public views about how these lands should be managed, a significant change in the information and scientific understanding of these ecosystems has occurred. Some new information is a product of research, while other information has resulted from changes in technology.

Major Revision Topics

Based on the information sources identified earlier, the combined effect of the needed changes demand attention through plan revision. The major revision topics described below influenced the decision to revise the plans.

Rangeland and Forest Health

Planning Questions

* What management goals, direction, and prescriptions will best attain desired conditions for rangeland and forest health?

Background. Issues and concerns over rangeland health frequently relate to the current productivity of these lands and the resulting capacity to provide livestock forage and wildlife food and cover. The quality and quantity of grass and other vegetation produced on these lands are influenced by soil type, weather, land use, disturbances such as fire and drought, and many other factors. Livestock grazing can help maintain, enhance or decrease rangeland productivity, depending on management. This planning effort will provide an opportunity to assess how livestock grazing can be used to best attain desired rangeland productivity. The issue of rangeland productivity is also relevant to addressing the role of National Grasslands in ''* * * administering sound and progressive principles of land conservation and multiple use, and to promote development of grassland agriculture and sustained-yield management of the forage, fish and wildlife, timber, water and recreation resources * * *'' (36 CFR 213.1). This role for the National Grasslands is established by regulation and pertains to those lands administered by the Forest Service under Title III of the Bankhead-Jones Farm Tenant Act.

Forest health issues on these lands are closely tied to the ability of riparian and other prairie woodlands to regenerate and sustain themselves. Fire suppression, and insect and disease damage in coniferous forests are other issues related to forest health.

Biological diversity is another aspect of rangeland and forest health. Numerous individuals and groups have expressed concerns about land-use effects on the diversity, abundance and distribution of native plants and animals. These concerns extend to terrestrial and aquatic plants and animals, rare species, declining grassland bird species, game species and other wildlife. For example, interest in black-tailed prairie dog colonies as habitat for threatened and endangered species and other wildlife on National Grasslands is high. Others suggest that more focus be placed on returning bison to their native habitats. Habitat for numerous threatened, endangered and sensitive species occurs on these areas, and the likelihood of other species being proposed for protection under the Endangered Species Act supports the need to revise current management plans. State fish and wildlife agencies and others have also expressed considerable interest in management and fish and wildlife habitats on these lands and have expertise to provide for conservation of these species and their habitats. The Council on Environmental Quality recommends incorporating biodiversity conservation in environmental analyses.

Other issues and concerns about rangeland and forest health include soil stability, water quality, noxious weeds, exotic plants and animals, and wetlands management.

Community and Lifestyle Relationships

Planning Questions

* How may communities, people and their lifestyles be affected by decisions made in the revision effort?

* How do communities and people and their lifestyles affect uses and management of these public lands?

* How do management decisions affect the interdependent relationship of resources, people, lifestyles, and economies?

Background. Commodity and amenity benefits from public lands within the planning area have contributed to the social systems and economic base of many neighboring communities. The human environment includes natural and physical environment and the interdependent relationship of people to that environment.

Management decisions determine public land uses and resource availability from those lands. In resource-based economies, these decisions can perpetuate or disrupt relationships between public land management, communities, and lifestyles. Communities with more diverse economies may be better able to adopt to changes, even though some economic sectors may be strained as change occurs. The capacity to handle change without major hardships or disruptions to social groups or institutions is an important component of community and lifestyle relationships.

Economic effects can include changes in local employment and income, payments to state and local government, and can also have possible implications to local government services and community infrastructure.

Livetock Grazing

Planning Questions

* How will management of vegetation affect availability of forage for permitted livestock?

* What are the desired vegetation conditions and how can livestock grazing be used to help achieve them?

Background. Livestock grazing occurs on most of these lands under a permit system and is a major economic activity in these rural areas. Livestock grazing levels and strategies need to provide for sustained stewardship of the land, resources and rural communities. However, appropriate grazing levels and strategies continue to be debated. Researcher, scientist and resource management specialists at various universities, agencies and institutions are currently gathering information that will be valuable in assessing issues related to livestock grazing.

The Forest Service is required by regulation (36 CFR 219.20) to determine suitability and potential capability of National Grasslands and Forest to produce forage for livestock. This regulation prescribes that the grazing systems and facilities (such as fencing and water developments) to support livestock grazing also be evaluated and considered during the planning process. The amount of facilities and structural developments on these lands to support livestock grazings is an issue. Some individuals want to see more

developments on public lands while others want to see less or current levels.

Another issue related to livestock grazing is drought. Droughts can substantially reduce available livestock forage and, if prolonged, can result in long-lasting changes in plant species composition and rangeland productivity. Livestock grazing strategies during and after drought can affect range recovery so grazing guidelines for drought period may be proposed for some areas.

Oil and Gas Leasing

Planning Questions

* Which National Forests System lands (or portions) are administratively available for oil and gas leasing?

* What specific lease stipulations will apply to those lands determined to be administratively available for leasing?

* Are existing lease decisions and stipulations consistent with management goals and objectives?

Background. In 1987, Congress passed the Federal Onshore Oil and Gas Leasing Reform Act, which expanded the Secretary of Agriculture's role in the leasing decision process. Within the National Forest System, the Secretary of Agriculture is authorized to identify lands where leases can be sold and to determine appropriate stipulations to protect surface resources. Regulations to implement this Act were developed by the Secretary and became effective April 20, 1990 (36 CFR, Part 228, 100 et. seq.).

Leasing analyses in accordance with the requirements of 36 CFR 228.102(c) have been completed for about 1.7 million acres of the planning area, including the Little Missouri, Cedar River, and Thunder Basin National Grasslands and the western half of Fall River County on the Buffalo Gap National Grassland. Existing leasing decisions will be reviewed in light of new information generated as a result of Northern Great Plains Assessments and other sources since the leasing decisions were made (e.g., newly listed threatened and endangered species, rare ecosystem elements or habitats). This new information may result in changes to previous leasing availability decisions or to leasing requirements, or both. Existing leases will not be affected by these changes.

The remaining 1.2 million acres of the planning area (Sheyenne, Grand River, Fort Pierre, Oglala National Grasslands, the remainder of the Buffalo Gap National Grassland, and Nebraska and Samuel R. McKelvie National Forests) will be examined for oil and gas potential and, based on the potential, may have a leasing analysis completed.

Plant and Animal Control

Planning Questions

* How and when should resource or property damage caused by noxious weeds, exotic plants, insects, disease, rodents and other animals be controlled or managed?

Background. Under certain conditions, some plant and animal species can cause unacceptable economic and/or environmental damage. Plant and animal damage control activities currently conducted or authorized by the Forest Service on National Grasslands and Forests are largely directed towards noxious weeds and prairie dogs. Biological controls and herbicides are currently being used to control noxious weeds such as leafy spurge and Canada thistle. These weeds can substantially reduce native plant species and forage production. Prairie dog reductions in selected colonies on the National Grasslands are primarily in response to concerns of neighboring private landowners who do not want prairie dogs moving onto their lands. Concerns expressed about these programs range from the economic losses from damage to potential effects of the control activities on wildlife and the environment. Human health and safety issues are also associated with the use of pesticides and herbicides.

Predators are occasionally removed from some of the National Grasslands and Forests to protect livestock, wildlife, and public health and safety. The Animal and Plant Health Inspection Service (APHIS) is the lead federal agency for predator control on these public lands and is conducting its own evaluation and planning for these activities. However, in South Dakota, predator control is conducted by the South Dakota Department of Game, Fish and Parks through an agreement with APHIS. Under this agreement, APHIS acts in an advisory capacity. APHIS also has the lead responsibility for evaluating, planning and initiating grasshopper control projects on the National Grasslands. Issues related to the responsibilities of APHIS will not be addressed in this planning effort.

Recreation and Travel Management

Planning Question

* What recreation opportunities should be provided?

* What travel opportunities should be provided?

Background. Demand for recreational opportunities on these public lands is increasing dramatically. Contributing factors are: 1) Increasing number of hunters on public lands; 2) increasing appreciation for the beauty of the prairie; and 3) people taking shorter vacations on nearby public lands. The public is asking us to address recreational uses and values on these National Grasslands and Forests. During revision, scenery management objectives and recreational opportunities will be determined. Results from customer surveys will help determine public expectations for recreational opportunities.

Recreational uses and interests vary widely across the planning area. Some recreational activities, such as mountain biking and use of all-terrain vehicles, have increased in popularity since land and resource management plans were written. Current recreational use in some units exceeds levels anticipated in the existing plans. Increased recreational use highlights the importance and value of these National Forests and Grasslands in filling recreational, esthetic and spiritual needs.

Upland bird and big game hunting are major dispersed recreational activities on many of these public lands. Hunters are interested in how wildlife cover on these areas is managed. This concern is not fully addressed in existing land and resource management plans. Prairie dog shooting is another popular activity on the grasslands. Hunters have expressed concern over prairie dog management activities that might affect their recreational opportunities.

Travel management is often an important element in recreational experiences. Some users desire primitive recreational experiences with restricted motorized travel. Some recreationists rely on motorized access for their experiences, such as all-terrain vehicle users. Because recreational use on these public lands has increased over the last decade, the potential for conflicts has also increased. The appropriateness of motorized travel as it complements or conflicts with specific recreational settings and associated experiences will be examined and determined during the revision process.

Special Area Designations

Planning Questions

* Which, if any, roadless areas should be recommended to Congress for Wilderness designation?

* How should roadless areas not recommended for Wilderness designation be managed?

* Which rivers on the planning units are eligible for inclusion in the National Wild and Scenic Rivers System?

* Which, if any, eligible rivers are suitable and should be recommended for inclusion into the National Wild and Scenic River System?

* How should eligible rivers not recommended for inclusion be managed?

* What, if any, Research Natural Areas or Special Interest Areas may be needed for their contributions to furthering knowledge about natural systems or other objectives?

Background. The planning area includes many unique and outstanding combinations of physical and biological resources, and areas of social interest. These are collectively referred to as ''special areas.'' Interest in protecting special areas has been shown by the public, other agencies, and Forest Service employees.

Special area designations may include Wilderness; Wild and Scenic Rivers; Research Natural Areas (RNAs); and special recreational areas with scenic, historical, geological, botanical, zoological, paleontological, archaeological or other special characteristics. These special areas may influence land allocation and management.

Maintaining grassland roadless areas and establishing grassland Wilderness areas have become important to some people. Within the last few years, various groups have offered proposals for grassland Wilderness in South Dakota and North Dakota. Likewise, interest for Research Natural Areas in grassland ecosystems has increased since the planning effort. Some would like to see the Forest Service preserve and study some areas of native prairie vegetation.

The Forest Service is required (36 CFR 219.17) to evaluate all roadless areas for potential Wilderness designation during the revision process. This process will produce an inventory of roadless areas meeting minimum criteria for Wilderness according to the 1964 Wilderness Act or 1975 Eastern Wilderness Act, as appropriate. Actual Wilderness designation is a Congressional responsibility; the Forest Service only makes recommendations.

The purpose and authority for study of Wild and Scenic Rivers are in the Wild and Scenic Rivers Act of October 1, 1968, as amended. All rivers and streams determined eligible for potential inclusion in the Wild and Scenic River System will be examined. The Custer National Forest Management Plan (1987) identified the Little Missouri River as an eligible river. A suitability study will be done as part of the revision process.

Topics Outside the Scope of Management Plan Decisions

Some topics are raised by the public that are outside the scope of this action. They include topics that require departmental or legislative actions or topics that come under the authority of other governmental agencies. Examples of topics that fit these categories are listed below:

Departmental and Legislative Topics—grazing fee levels; recreation user fees; sale or transfer of administration of National Grasslands; transfer of Cedar River and Grand River National Grasslands to the Standing Rock Sioux Tribe; and transfer of Buffalo Gap National Grassland to the Oglala Sioux Tribe.

Topics for Other Governmental Agencies—predator control; grasshopper control; and transfer of Shadehill Reservoir to another federal agency.

What To Do With This Information

This revision effort is being undertaken to develop management direction to:

* Provide goods and services to people;

* Involve people and communities; and

* Sustain ecosystem functions.

''Collaborative stewardship,'' which is defined as caring for the land and serving the people by listening to all constituents and living within the limits of the land, will guide the revision effort.

Framework for Alternatives To Be Considered

A range of alternatives will be considered when revising the Management Plans. The alternatives will address different options to resolve concerns raised as revision topics listed above and to fulfill the purpose and need. Reasonable alternatives will be evaluated and reasons will be given for eliminating some alternatives from detailed study. A ''no-action alternative'' is required, meaning that management would continue under existing plans. Alternatives will provide different ways to address and respond to public issues, management concerns, and resource opportunities identified during the scoping process. In describing alternatives, desired vegetation and resource conditions will be defined. Resource outputs from Management Plans will be estimated based upon achieving desired conditions. Preliminary information is available to develop alternatives; however, additional public involvement and collaboration will be done to complete this development.

Involving the Public

An atmosphere of openness is one of the objectives of the public involvement process, where all members of the public feel free to share information with the Forest Service and its employees on a regular basis. All parts of this process will be structured to maintain this openness.

The Forest Service is seeking information, comments, and assistance from individuals, organizations and federal, state, and local agencies who may be interested in or affected by the proposed action (36 CFR 219.6). The Forest Service is also looking for collaborative approaches among all landowners who desire health and productivity for the planning area. Many federal and state agencies and some private organizations have been cooperating in the development of assessments of current biological, physical, and economic conditions. This information will be used to prepare the Draft Environmental Impact Statement (DEIS). The range of alternatives to be considered in the DEIS will be based on public issues, management concerns, resource management opportunities, and specific decisions to be made.

Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. News releases will be used to give the public general notice, and public scoping opportunities will be offered in numerous locations. Public participation activities will include (but are not limited to) requests for written comments, open houses, focus groups, field trips, and collaborative forums.

Public participation will be sought throughout the revision process and will be especially important at several points along the way. The first opportunity to comment is during the scoping process (40 CFR 1501.7). Scoping includes: (1) identifying potential issues, (2) from these, identifying significant issues or those that have been covered by prior environmental review, (3) exploring additional alternatives, and (4) identifying potential environmental effects of the proposed action and alternatives.

Release and Review of the EIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by June 1998. At that time, the EPA will publish a notice of availability for the DEIS in the Federal Register. The comment period on the DEIS will be 90 days from the date the EPA

publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the three-month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in May 1999. The responsible officials will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible officials will document their decisions and reasons for their decisions in a separate Record of Decision for each Management Plan. Each decision will be subject to appeal in accordance with 36 CFR 217.

The responsible official for each of the Management Plans is the appropriate Regional Forester.

Dated: February 11, 1997.

Kathleen McAllister,

Deputy Regional Forester, Northern Region.

Dated: February 13, 1997.

Elizabeth Estill,

Regional Forester, Rocky Mountain Region.

[FR Doc. 97–4681 Filed 2–25–97; 8:45 am]

BILLING CODE 3410–11–M

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 2:00 pm, Wednesday, March 12, 1997.

PLACE: SDC–59, Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Report on financial status of the Foundation fund
   A. Review of investment policy and current portfolio
2. Report on results of Scholarship Review Panel
   A. Discussion and consideration of scholarship candidates
   B. Selection of Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, President, Telephone: (703) 756–6012.

Gerald J. Smith,

President.

[FR Doc. 97–4901 Filed 2–24–97; 12:41 pm]

BILLING CODE 4738–91–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Current Industrial Reports Surveys—WAVE I (Voluntary and Mandatory Submissions)

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 28, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th Street 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:

Contact	Industries	Telephone	Address
Michael Zampogna	Manufactured nondurable products.	(301) 457–4810	Bureau of Census, Manufacturing & Construction Division, Room 2212, Building 4, Washington, DC 20233.
Kenneth Hansen	Manufactured durable products.	(301) 457–4755	Bureau of Census, Manufacturing & Construction Division, Room 2207, Building 4, Washington, DC 20233.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys.

Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart collects annual data from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes we group the surveys into three Waves. The mandatory and voluntary surveys in each Wave are separately submitted. Thus, a total of six clearances cover all of the surveys in the CIR program. One Wave is submitted for reclearance each year. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave I for clearance. The surveys in Wave I are as follows:

Mandatory Surveys

M2OH—Fats and Oils (Warehouse Stocks)
M20M—Fats and Oils (Consumers)
M20N—Fats and Oils (Producers)
MA28F—Paints and Allied Products
MA32C—Refractories
MA33A—Iron and Steel Foundries
MA33E—Nonferrous Casting
MA34K—Steel Drums and Pails
MA35A—Farm Machinery
MA35M—Air Conditioning and Refrigeration

Equipment

MA35Q—Anti-Friction Bearings
MA36A—Switchgear, Relays, Etc.
MA36F—Major Household Appliances
MA36H—Motors and Generators
MA36K—Wiring Devices and Supplies
MA36P—Communication Equipment
MA37D—Aerospace(will be merged with M37G)
MA38B—Instruments and Related Products

Voluntary Surveys

M37G—Civil Aircraft and Engines (MA37D will be merged with M37G)
M37L—Truck Trailers
MA35N—Fluid Power Products
MQ22D—Consumption on the Woolen System
MQ28B—Fertilizer Materials
MQ32D—Clay Construction Products
MQ34E—Plumbing Fixtures
MQ36B—Electric Lamps (discontinued in 1994)
MQ36C—Fluorescent Lamp Ballasts

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607–0392—Mandatory Surveys; 0607–0393—Voluntary Surveys and annual counterparts.

Form Number: See table above.

Type of Review: Regular Review.

Affected Public: Businesses, Other for Profit, or Organizations.

ESTIMATED NUMBER OF RESPONDENTS

Mandatory Surveys	11,429
Voluntary Surveys	1,735
Total	13,164

Estimated Time Per Response:

Mandatory Surveys—1.27 hrs
Voluntary Surveys—1.86 hrs

ESTIMATED TOTAL ANNUAL BURDEN HOURS

Mandatory Surveys	14,493
Voluntary Surveys	3,233
Total	17,726

Estimated Total Annual Cost: The estimated cost of the CIR program for fiscal year 1997 is $4.3 million.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys. Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart collects annual data from those firms not participating in the more frequent collection.

Legal Authority: Title 13, United States Code, Sections 61, 131, 182, 224, and 225.

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; (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 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: February 20, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–4697 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 022097A]

Advisory Panel on Atlantic Pelagic Longline Fisheries

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

ACTION: Notice.

SUMMARY: NMFS solicits nominations for the Atlantic pelagics longline advisory panel (AP). The purpose of the AP would be to assist NMFS in the design and implementation of a survey, workshops, and a comprehensive management system for pelagic longline fisheries. The AP will include representatives from all constituent groups with an interest in Atlantic pelagic longline fisheries.

DATES: Nominations must be submitted on or before March 28, 1997.

ADDRESSES: Nominations should be submitted Rebecca Lent, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may be submitted by fax; 301–713–1917.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, an Advisory Panel (AP) will be established to assist NMFS in the design and implementation of a survey, workshops, and a comprehensive management system for pelagic longlining fishing vessels that participate in fisheries for Atlantic highly migratory species (HMS).

The purpose of the AP is to assist in developing a comprehensive management system for pelagic longline

fishing vessels that participate in HMS fisheries. Surveys and workshops will be conducted by NMFS personnel and/or contractors with affected fishery participants, in order to provide information and identify options for the development of the management system. NMFS, in consultation with the AP, will develop a plan to conduct a study on the feasibility of implementing a comprehensive management system.

Procedures and Guidelines

A. *Procedures for Establishing the Advisory Panel.*

Individuals representing definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental and quasi-governmental entities will be considered as members of the AP. Selection of AP members will not be limited to those that are nominated.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. The name of the applicant or nominee and a description of their interest in or connection with HMS and the pelagic longline fishery in particular;

2. A statement of background and/or qualifications;

3. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP.

B. *Participants.*

The AP shall consist of not less than seven (7) members who are knowledgeable about the Atlantic pelagic longline fishery. Nominations will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each interest must be adequately represented. The intent is to have a group that as a whole reflects an appropriate balance and mix of interests given the responsibilities of the AP. Criteria for membership include (one or more of the following): a) Experience in or knowledge of the commercial longline fishing industry involved in harvesting tunas, swordfish, or sharks; b) experience in or knowledge of the recreational fishing industry involved in harvesting HMS; c) experience in connected industries (marinas, bait and tackle shops, processors); d) experience in the scientific community working with HMS; e) former or current representative of private, regional, state, national, or international organization representing marine fisheries interests dealing with HMS.

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, we will be unable to compensate participants with monetary support of any kind because no funds were appropriated to support this activity in fiscal year 1997. Members will be expected to pay for travel costs related to the AP.

C. *Tentative Schedule.*

Meetings of the AP will be held twice or thrice yearly. NMFS, in consultation with the AP, will develop by June 1997, a plan to conduct workshops/surveys and results of these workshops and surveys will be published by December 1997. A plan to conduct a feasibility study of the comprehensive management plan will be developed by July 1997 and the final study will be published and distributed by January 1998. NMFS has initially determined that the responsibilities of the AP members will be concluded by October 1998, as management advisory responsibilities will be carried out by other AP's for swordfish, sharks, billfish, and tunas. These AP's will consider any comprehensive management plan that is developed in consultation with this longline AP.

Dated: February 19, 1997.

Gary C. Matlock,

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

[FR Doc. 97–4655 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012797G]

Magnuson-Stevens Fishery Conservation and Management Act; Request for Nominations of Individuals for the Ecosystem Research Advisory Panel

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

ACTION: Notice of request for nominations.

SUMMARY: Section 406 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires NMFS to establish an advisory panel to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. NMFS requests nominations of qualified individuals to serve on the advisory panel.

DATES: Nominations will be accepted through March 21, 1997.

ADDRESSES: Nominations should be sent to Office of Science and Technology, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, ATTN: Fisheries Ecosystem Panel.

FOR FURTHER INFORMATION CONTACT: Ned Cyr, NMFS, (301) 713–2363.

SUPPLEMENTARY INFORMATION: Section 406 of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), as amended by the Sustainable Fisheries Act (Public Law 104–297), requires NMFS to establish an advisory panel, not later than April 11, 1997, to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. The panel will consist of no more than 20 individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems. The panel will also consist of representatives from the Regional Fishery Management Councils, states, fishing industry, conservation organizations, or others with expertise in the management of marine resources. The panel will be required to submit a report to Congress by October 11, 1998, which includes: An analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities; proposed actions by the Secretary of Commerce and by Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and such other information as may be appropriate.

NMFS is requesting nominations of qualified individuals to serve as advisory panel members. Please submit nominations of qualified individuals, along with supporting credentials, to NMFS (see **ADDRESSES**).

Dated: February 19, 1997.

Gary C. Matlock,

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

[FR Doc. 97–4654 Filed 2–25–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Technology Innovation Challenge Grants

AGENCY: Department of Education.

ACTION: Notice of proposed selection criteria, selection procedures, and application procedures.

SUMMARY: The Secretary proposes selection criteria, procedures for

evaluating and selecting applications, and procedures for submission of applications under the Technology Innovation Challenge Grants Program. The Secretary may use these selection criteria, selection procedures and application procedures in fiscal year 1997 (FY 1997) and in subsequent years. The Secretary takes this action to make informed funding decisions on applications for technology projects having great promise for improving elementary and secondary education.

DATES: Comments must be received on or before March 28, 1997.

ADDRESSES: All comments concerning the proposed selection criteria, selection procedures, and application procedures should be sent to: Technology Innovation Challenge Grants, Office of Educational Research and Improvement, U.S. Department of Education, Room 606D, 555 New Jersey Avenue, NW, Washington, DC 20208–5544. Comments may also be sent through the Internet to ITO__STAFF1@ed.gov or by FAX to (202) 208–4042.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this notice. A copy of those comments may also be sent to the address in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Technology Innovation Challenge Grants, Office Of Educational Research and Improvement, U.S. Department of Education, Room 606D, 555 New Jersey Avenue, NW, Washington, DC 20208–5544. Telephone: (202) 208-3882. 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: The Technology Innovation Challenge Grants Program is authorized in Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846).

Under this program the Secretary makes grants to consortia. Each consortium must include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line and may include other LEAs, private schools, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, or other appropriate entities. The Technology Innovation Challenge Grants Program provides support to consortia that are developing, adapting, or expanding existing and new applications of technology to improve schools through activities that include continuous professional development for teachers and the development of high quality academic content that helps all children learn to challenging standards.

The Secretary will announce the final selection criteria, selection procedures, and application procedures in a notice in the Federal Register. The final selection criteria, selection procedures, and application procedures will be determined by responses to this notice and other considerations of the Department.

Note: This notice does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following publication of the notice of final selection criteria, selection procedures, and application procedures.

Selection Criteria

The Secretary proposes in this notice selection criteria, selection procedures, and application procedures for the FY 1997 competition and subsequent competitions. The program statute (20 U.S.C. 6846(c)) requires the Secretary to give priority in awarding grants to consortia that demonstrate certain factors in their applications. The Secretary proposes to carry out this mandate by incorporating the priority factors into the selection criteria. In addition, the Secretary believes that substantive selection criteria specifically framed for this program competition are necessary to enable the Secretary to evaluate how well the applicants address the purpose of the Technology Innovation Challenge Grants Program.

Proposed Criteria

The Secretary proposes the following unweighted selection criteria to evaluate applications:

(a) *Significance.* The Secretary reviews each proposed project for its significance by determining the extent to which the project—

(1) Offers a clear vision for the use of technology to help all students learn to challenging standards;

(2) Will achieve far-reaching impact through results, products, or benefits that are easily exportable to other settings and communities;

(3) Will directly benefit students by integrating acquired technologies into the curriculum to improve teaching and student achievement;

(4) Will ensure continuous professional development for teachers, administrators, and other individuals to further the use of technology in the classroom, library, or learning settings in the community;

(5) Is designed to serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need for educational technology; and

(6) Is designed to create new learning communities among teachers, students, parents, and others, which contribute to State or local education goals for school improvement, and expand markets for high-quality educational technology or content.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project will ensure successful, effective, and efficient uses of technologies for educational reform that will be sustainable beyond the period of the grant;

(2) The members of the consortium or other appropriate entities will contribute substantial financial and other resources to achieve the goals of the project; and

(3) The applicant is capable of carrying out the project, as evidenced by the extent to which the project will meet the problems identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination plan; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project.

Evaluation and Selection of Applications

The Secretary proposes to evaluate applications using unweighted selection criteria. The Secretary believes that the use of unweighted criteria is most appropriate because they will allow the reviewers maximum flexibility to apply their professional judgments in identifying the particular strengths and weaknesses in individual applications.

The Secretary also believes that due to the highly technical nature of the applications, it will be necessary to obtain clarification and additional information from applicants during the selection process. For the purposes of the Technology Innovation Challenge Grants Program, the Secretary proposes to be able to request highly rated applicants to submit additional information in response to specific questions raised during the application selection process for the FY 1997 competition and subsequent competitions. In accordance with 34 CFR 75.231, the Secretary also may

request an applicant to submit additional information after the application has been selected for funding.

Proposed Selection Procedures

In applying the selection criteria, the Secretary proposes to use a three-tier peer review process for the FY 1997 competition and subsequent competitions. In view of the large number of applications in this program, and in consideration of the complexity of each application, the Secretary believes this process is necessary to ensure full and thorough consideration of each application.

At each tier of the review process panels of experts will read the applications under consideration to determine which applications are most deserving of further consideration in light of the selection criteria. The Department will, to the extent feasible, use reviewers that represent three areas of expertise: (1) K–12 school-based educators who use new technologies for classroom instruction or curriculum development; (2) K–12 school-based administrators who have management responsibility for school-wide, system-wide, or state-wide technology applications; and (3) educational technology experts drawn from higher education, consulting firms, or technology related firms.

At each tier of the review process, each reviewer assigns a qualitative rating for Significance and a qualitative rating for Feasibility to each application he or she reviews. The qualitative ratings used by individual reviewers are as follows: ''A'' for high quality; ''B'' for satisfactory quality; and ''C'' for unsatisfactory quality. The reviewers also assign an overall rating of ''A'', ''B'', or ''C'' for each application they review.

In Tier I of the review process reviewers are recruited to serve on panels that meet in several regional sites around the country. Tier I of the review process has two stages. In Stage 1 of Tier I, all of the applications received by the published application deadline are assigned to teams of readers at each site. The applications are read and rated by all of the individual readers on the team, who then meet to compare their individual ratings of each application they have read with each other. Through this process the reviewers identify applications that have been unanimously awarded high ratings. At the end of Stage 1 of Tier I each team at a review site forwards its most highly rated applications for further consideration. The applications forwarded for further consideration at that site are then read and individually rated by reviewers who served as team leaders in Stage 1 of Tier I. These team leaders use the same qualitative ratings of ''A'', ''B'', and ''C'' for Significance, Feasibility and the overall rating for each forwarded application they read. In Stage 2 of Tier I the team leaders meet to compare the ratings of all the applications they have read or considered at both stages of Tier I, taking into account all of the readings and ratings of all of the reviewers for each application at that site. Those applications that have been unanimously awarded high ratings by the team leaders at the end of Stage 2 of Tier I are forwarded for further consideration at Tier II of the review process.

In Tier II of the review process, team leaders from all of the regional sites are brought together to serve as reviewers at a single site. These reviewers read the applications forwarded for further consideration from Tier I. Taking into account the quality of all of the applications they have read, the reviewers assign a qualitative rating for Significance, a qualitative rating for Feasibility, and an overall rating of ''A'', ''B'', or ''C'' for each application they review.

Tier II of the review process has two stages. In Stage 1 of Tier II, the reviewers meet in teams to compare their individual ratings of each application they have read. Through this process the reviewers identify applications that have been unanimously awarded high ratings. At the end of Stage 1 of Tier II each team forwards its most highly rated applications for further consideration. The applications forwarded for further consideration are then read and individually rated ''A'', ''B'', or ''C'' by the team leaders who served in Stage 1 of Tier II. In Stage 2 of Tier II the team leaders meet to compare the ratings of all the applications they have read or considered at both stages of Tier II, taking into account all of the readings and ratings of all of the reviewers for each application at that site. Those applications that have been unanimously awarded high ratings at the end of Stage 2 of Tier II are then forwarded for further consideration at Tier III of the review process. At the end of Tier II, the reviewers will also identify inconsistencies, points in need of clarification, and other concerns, if any, pertaining to each application. Each applicant whose application is forwarded for further consideration at the end of Tier II will have an opportunity to respond in writing to these clarification questions and concerns.

At Tier III readers are assembled to serve as reviewers at a single site. These reviewers have served as team leaders during each of the previous Tiers of the review, and each of the original Tier I review sites are represented by one team leader at Tier III. There is only one stage of review at Tier III. The reviewers read the applications that are still under consideration and, after reading the responses to the clarification questions, they assign ratings for Significance and Feasibility, and an overall rating of ''A'', ''B'', or ''C'' for each application, taking into account the quality of all of the applications they have read. The reviewers compare their individual ratings of each application they have read, and through this process the reviewers identify applications that have been unanimously awarded high ratings. Those applications that have unanimously high ratings are recommended for funding. The reviewers also provide individual recommendations on an appropriate budget level for each application recommended for funding. The Secretary awards grants only to those applications the reviewers have recommended for funding at the end of Tier III. No other applications are considered for funding. In the final selection of applications for funding, the Secretary may also consider the extent to which each application demonstrates an effective response to the learning technology needs of areas with a high number or percentage of disadvantaged students or the greatest need for educational technology. In preparation for a grant award, the Secretary also may request an applicant to submit additional information after the application has been selected for funding.

The Secretary believes these procedures lead to the selection of the best applications for funding under this program.

Application Deadline

The Secretary, in order to ensure timely receipt and processing of applications, proposes the following application deadline for the FY 1997 competition and subsequent competitions.

Proposed Procedures for Submission of Applications

Applications, in order to be considered for funding under this program, must be received on or before the deadline date announced in the application notice published in the Federal Register. The Secretary will not consider an application for funding if it is not received by the deadline date

unless the applicant can show, in accordance with 34 CFR 75.102 (d) and (e), proof that the application was (1) sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102(d) and (e). Applications delivered by hand must be received by 4:00 p.m. (Washington, D.C. time) on the deadline date. For the purposes of this competition the Secretary proposes not to apply 34 CFR 75.102(b), which requires an application to be mailed, rather than received, by the deadline date.

Paperwork Reduction Act of 1995

The proposed selection criteria contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these selection criteria to the Office of Management and Budget (OMB) for review.

Collection of Information: Technology Innovation Challenge Grants Program.

Under this program consortia are eligible to apply. Each consortium must include at least one LEA with a high percentage or number of children living below the poverty line and may include other LEAs, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, or other appropriate entities. The information to be collected includes a description of each proposed project, including the professional development that teachers and other educational support staff will receive in the use of technologies; the integration of acquired technologies into curriculum to enhance teaching, training, and student achievement; and a project evaluation including a dissemination strategy. The Department needs and will use the information to select, on the basis of project feasibility and significance, the highest quality applications.

All information is to be collected and reported once, as part of the application for assistance. Annual reporting and recordkeeping burden for this collection of information is estimated to average 40 hours for each response for 500 respondents, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 20,000 hours. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

OMB is required to make a decision concerning the collections of information contained in these proposed selection criteria, selection procedures, and application procedures between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed selection criteria and procedures.

Intergovernmental Review

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

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed selection criteria and procedures. Comments will be available for public inspection, during and after the comment period, in Room 606D, 555 New Jersey Avenue, NW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 6846.

(Catalog of Federal Domestic Assistance Number 84.303A, Challenge Grants for Technology in Education)

Dated: February 21, 1997.

Marshall Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–4768 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.304A]

International Education Exchange Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: To support international education exchange activities between the United States and eligible countries in civics and government education and economic education.

Eligible Applicants: Independent nonprofit educational organizations that—

(a) Have expertise in international achievement comparisons, and are experienced in—

(1) The development and national implementation of curricular programs in civics and government education and economic education for students from grades kindergarten through 12 in local, intermediate, and State educational agencies, in schools funded by the Bureau of Indian Affairs, and in private schools throughout the Nation with the cooperation and assistance of national professional educational organizations, colleges and universities and private sector organizations;

(2) The development and implementation of cooperative university and school-based inservice training programs for teachers of grades kindergarten through 12 using scholars from such relevant disciplines as political science, political philosophy, history, law, and economics;

(3) The development of model curricular frameworks in civics and government education and economic education;

(4) The administration of international seminars on the goals and objectives of civics and government education or economic education in constitutional democracies (including the sharing of curricular materials) for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers; and

(5) The evaluation of civics and government education or economic education programs; and

(b) Have the authority to subcontract with other organizations to carry out these provisions.

Deadline for Transmittal of Applications: May 5, 1997.

Deadline for Intergovernmental Review: July 7, 1997.

Applications Available: March 5, 1997.

Available Funds: $4,980,000.

Estimated Range of Awards: $2,290,000 to $2,690,000.

Estimated Average Size of Awards: $2,490,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Maximum award: In no case does the Secretary make an award greater than $2,690,000 for a single budget period of 12 months. The Secretary does not consider an application that proposes a budget exceeding this maximum amount.

Budget period: 12 months.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR parts 98, 99, and 700.

PRIORITIES

Under 34 CFR 75.105(c)(3) and 20 U.S.C. 5951(c)(2)(B) the Secretary gives an absolute preference to applications that meet one of the priorities in the next two paragraphs. The Secretary funds under this competition only applications that meet one of these absolute priorities.

Absolute Priority 1—International Education Exchange Program in Civics and Government Education.

Absolute Priority 2—International Education Exchange Program in Economic Education.

To meet one of these two priorities, each applicant must propose to carry out the following activities, in either civics and government education *or* economic education:

(a) Provide eligible countries with—

(1) Seminars on the basic principles of the United States constitutional democracy and economics, including seminars on the major governmental and economic institutions and systems in the United States, and visits to such institutions;

(2) Visits to school systems, institutions of higher learning, and nonprofit organizations conducting exemplary programs in civics and government education and economic education in the United States;

(3) Home stays in United States communities;

(4) Translations and adaptations regarding the United States civics and government education and economic education curricular programs for students and teachers, and in the case of training programs for teachers translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas;

(5) Translation of basic documents of United States constitutional government for use in eligible countries, such as *The Federalist Papers,* selected writings of Presidents Adams and Jefferson, and the Anti-Federalists, and more recent works on political theory, constitutional law and economics;

(6) Research and evaluation assistance to determine—

(i) The effects of educational programs on students' development of the knowledge, skills and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) Effective participation in and the preservation and improvement of an efficient market economy;

(b) Provide United States participants with—

(1) Seminars on the histories, economies, and governments of eligible countries;

(2) Visits to school systems, institutions of higher learning, and organizations conducting exemplary programs in civics and government education and economic education located in eligible countries;

(3) Home stays in eligible countries;

(4) Assistance from educators and scholars in eligible countries in the development of curricular materials on the history, government, and economies of such countries that are useful in United States classrooms;

(5) Opportunities to provide on-site demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(6) Research and evaluation assistance to determine—

(i) The effects of educational programs on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) Effective participation in and improvement of an efficient market economy; and

(7) Educational programs which draw upon the experiences of emerging constitutional democracies that are created and implemented for United States students; and

(c) Assist participants from eligible countries and the United States in participating in international conferences on civics and government education and economic education. The primary participants in these conferences shall be leading educators in the areas of civics and government education and economic education, including curriculum and teacher training specialists, scholars in relevant disciplines, and educational policymakers, from the United States and eligible countries. Also, provide a means for the exchange of ideas and experiences in civics and government education and economic education among political, educational, and private sector leaders of participating eligible countries.

Note: For this program, the term ''eligible country'' means a Central European country, an Eastern European country, Lithuania, Latvia, Estonia, Georgia, the Commonwealth of Independent States, and any country that formerly was a republic of the Soviet Union whose political independence is recognized in the United States.

Selection Criteria: The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary will announce in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

For Applications or Information Contact: Dr. Ram N. Singh or Ms. Rita Foy, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 610, Washington, DC 20208–5573. Telephone: (202)–219–2079. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice

for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 5951.

Dated: February 21, 1997.

Marshall Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–4770 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.039D]

Library Research and Demonstration—Demonstration of a Non-Profit Regional Social Tolerance Resource Center Operating Tolerance Tools and Prejudice Reduction Programs and Multimedia Tolerance and Genocide Exhibits; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: The Library Research and Demonstration Program provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, education in library and information science, the enhancement of library services through effective and efficient use of new technologies, and dissemination of information derived from such projects. For fiscal year (FY) 1997 the competition for new awards focuses on projects designed to meet the absolute priority specified in this notice.

Eligible Applicants: Institutions of higher education that meet the definition of eligibility under the terms of 20 U.S.C. 1141(a) and other public or private agencies, institutions, and organizations.

Deadline for Transmittal of Applications: April 30, 1997.

Deadline for Intergovernmental Review: June 30, 1997.

Applications Available: March 12, 1997.

Available Funds: $1 million.

Estimated Average Size of Awards: $1 million.

Estimated Number of Awards: One.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations in 34 CFR part 700.

Absolute Priority: For fiscal year (FY) 1997 the Appropriations Act (P.L. 104–208) specifies that $1,000,000 shall be competitively awarded to a non-profit regional social tolerance resource center operating tolerance tools and prejudice reduction programs and multimedia tolerance and genocide exhibits.

Note: The Secretary funds only applications that meet all elements of this priority.

Selection Criteria: The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary announces in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

For Applications or Information Contact: Chris Dunn, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 300, Washington, DC 20208–5571. Telephone (202) 219–2299. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1033.

Dated: February 21, 1997.

Marshall S. Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–4769 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–P

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Closed Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Nominating Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the meeting.

DATE: March 14, 1997.

TIME: 1:30 to 3:00 p.m.

LOCATION: Room 100, 80 F St., N.W., Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting of the Nominating Committee is closed to the public under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)). In preparing a slate of candidates for the position of chair, vice-chair, and members of the Executive Committee, the Committee will discuss matters that relate solely to the internal rules and practices of the Board and personal qualifications and experience of potential candidates for these positions, which would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invation of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Ave., N.W., Washington, D.C. 20208–7564.

Dated: February 20, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–4764 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the public of their opportunity to attend.

DATE: March 21, 1997.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 100, 80 F St., N.W., Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The agenda for March 21 will cover the adoption of proposed by-laws and a proposed workplan; election of officers for 1997–99; the approval of standards for the conduct and evaluation of research, and for assessing performance on contracts, grants, and cooperative agreements, as well as standards for reviewing and designating exemplary and promising programs. A final agenda will be available from the Board's office on March 14.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Ave., N.W., Washington, D.C. 20208–7564.

Dated: February 20, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–4765 Filed 2–25–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Record of Decision for the Tank Waste Remediation System, Hanford Site, Richland, WA

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: This Record of Decision addresses actions by the U.S. Department of Energy (DOE) to manage and dispose of radioactive, hazardous, and mixed waste within the Tank Waste Remediation System (TWRS) program at the Hanford Site in southeastern Washington State. DOE, in cooperation with the Washington State Department of Ecology (Ecology), issued a Final Environmental Impact Statement (EIS) entitled ''Tank Waste Remediation System, Hanford Site, Richland, Washington, Final Environmental Impact Statement'' (TWRS EIS) (DOE/EIS–0189, August 1996). The Final EIS evaluates alternatives for the management and disposal of mixed, radioactive, and hazardous waste currently stored or projected to be stored in 177 underground storage tanks and approximately 60 active and inactive miscellaneous underground storage tanks associated with the Hanford Site's tank farm operations, as well as the management and disposal of approximately 1,930 cesium and strontium capsules currently stored at the Hanford Site.

Based on the environmental impact analysis of the Final EIS and after evaluating costs, regulatory compliance requirements, technical uncertainties, worker and public health and safety, and public, agency, National Research Council, and Tribal Nation comments, DOE has decided to implement the preferred alternative identified in the Final EIS for retrieval, treatment, and disposal of tank waste the, ''Phased Implementation alternative'' and to defer the decision on disposition of cesium and strontium capsules.

The Phased Implementation alternative was selected because it provides a balance among short-and long-term environmental impacts, meets all regulatory requirements, addresses the technical uncertainties associated with remediation, and provides the flexibility necessary to accommodate future changes in the remediation plans in response to new information and technology development.

While carrying out this decision, DOE will continually evaluate new information relative to the tank waste remediation program. DOE will also conduct periodic independent scientific and technical expert reviews, which DOE believes are essential to the success of the TWRS program. Further, DOE intends to conduct formal evaluations of new information relevant to the tank waste remediation program at three key points over the next eight years under its National Environmental Policy Act (NEPA) regulations (10 CFR 1021.314), with an appropriate level of public involvement, to ensure that DOE stays on a correct course for managing and remediating the tank waste. Various informal reviews also will be conducted during this period.

DOE has decided to defer action on the cesium and strontium capsules to further evaluate potential beneficial uses of the capsules and study potential long-term environmental impacts. The capsules will continue to be managed in the Hanford Site Waste Encapsulation and Storage Facility. DOE will complete an evaluation for potential future uses of the capsules within two years and will issue a Cesium and Strontium Management Plan that will address alternatives for beneficial uses. If no future uses are found and DOE determines that the capsules should be disposed of, DOE will select an alternative for disposal of the capsules and supplement this Record of Decision.

ADDRESSES: Addresses of DOE Public Reading Rooms and Information Repositories where the Final EIS, Record of Decision, and other relevant information are available for public review are listed at the end of this Record of Decision. The Final EIS and Record of Decision are also available for review on the Internet at www.hanford.gov/eis/twrseis.htm and on the DOE NEPA Web page (http://tis-nt.eh.doe.gov/nepa).

FOR FURTHER INFORMATION: Requests for copies of the Record of Decision or further information on the Final EIS or Record of Decision should be directed to Carolyn Haass, DOE Tank Waste Remediation System EIS NEPA Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 1249, Richland, WA 99352. Ms. Haass may be contacted by telephone at (509) 372–2731. Information on the DOE NEPA process may be requested from Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585. Ms. Borgstrom may be contacted by telephone at (202) 586–4600, or by leaving a message at (800) 472–2756.

SUPPLEMENTARY AGENCY INFORMATION:

Purpose and Need for Action

This Record of Decision addresses actions by DOE to manage and dispose of radioactive, hazardous, and mixed waste within the Tank Waste Remediation System (TWRS) program at the Hanford Site in southeastern Washington State. The waste includes approximately 212 million liters (56 million gallons) of waste stored or to be stored in underground storage tanks at the Hanford Site. DOE also will manage the cesium and strontium salts contained in approximately 1,930 capsules currently stored at the Site and, if they are determined to be waste, will dispose of the capsules. The tank waste and cesium and strontium capsules currently pose a low short-term risk to human health and the environment; however, storage costs are high, and the potential for an accident resulting in large releases of radioactive and chemical contaminants will increase as the facilities age.

DOE must implement long-term actions to safely manage and dispose of the tank waste, associated miscellaneous underground storage tanks, and the cesium and strontium capsules (if the cesium and strontium are determined to be waste) to permanently reduce potential risk to human health and the environment. These actions also are needed to ensure compliance with all applicable Federal and Washington State requirements regarding the management and disposal of radioactive, hazardous, and mixed waste.

Alternatives Considered in the Final EIS

The following describes the alternatives considered in the Final EIS and a discussion of their advantages and disadvantages.

In order to compare the alternatives for both the high- and low-activity fractions of the waste, vitrification was used as a representative technology to conduct the EIS analysis. DOE currently plans to implement parts of the Phased Implementation alternative through a privatization initiative whereby private companies will perform certain aspects of the remediation in an effort to use competition within the marketplace to bring new ideas and concepts to waste remediation and reduce project costs. Under current plans, the selected private companies will have the responsibility to treat the high-level waste using vitrification, and will have the option to immobilize the low-activity waste by either vitrification or other similar immobilization methods provided that the final waste form meets regulatory requirements. (DOE has issued contracts to two companies to design tank waste treatment facilities—both companies had proposed vitrifying low-activity waste.)

Tank Waste Alternatives Considered

Phased Implementation (Preferred Alternative)

The Phased Implementation alternative was identified in the Final EIS as the Preferred Alternative. Under the Phased Implementation alternative, the tank waste would continue to be safely stored until the waste is retrieved from the tanks for treatment and disposal by implementing a demonstration phase (Phase I) to verify that the treatment processes will function effectively and then by implementing a full-scale production phase (Phase II).

During Phases I and II, continued operations of the tank farm system and actions to address safety and regulatory compliance issues would be performed and would include:

- Upgrading tank farm infrastructure, including waste transfer, instrumentation, ventilation, and electrical systems;
- Monitoring tanks and equipment to support waste management and regulatory compliance requirements;
- Combining compatible waste types, interim stabilization of single-shell tank waste, continuing waste characterization, removing pumpable liquid from single-shell tanks, transferring newly generated waste from ongoing Site activities to double-shell tanks, operating the 242–A Evaporator and the Effluent Treatment Facility, and performing mitigative actions to resolve tank safety issues;
- Using rail or tanker truck systems to transport waste to the tank farms;
- Completing construction of and operating the new replacement cross-site transfer system to facilitate regulatory compliant waste transfers from 200 West to 200 East Area and continue operating the existing transfer pipeline system until the replacement system is operational; and
- Installing and operating an initial tank waste retrieval system to improve the capacity to consolidate double-shell tank waste and support mitigation of safety issues.

Phase I activities (Part A, development activities; Part B demonstration) activities would last for approximately 10 years and would include:

- Constructing demonstration-scale facilities to produce vitrified low-activity waste and vitrified high-level waste for future disposal;
- Installing and operating tank retrieval systems to retrieve selected waste (primarily liquid waste) for separations and immobilization, and selected tank waste for high-level waste vitrification;
- Transferring liquid waste to receiver tanks and transferring selected waste for high-level waste processing directly to the high-level waste facility;
- Performing separations to remove selected radionuclides (e.g., cesium) from the low-activity waste stream;
- Storing separated high-level waste at the treatment facilities or in the Canister Storage Building pending future high-level waste treatment;
- Returning a portion of the sludge, strontium, and transuranic waste from separations processes to the double-shell tanks for future retrieval and treatment during Phase II;
- Vitrifying the low-activity waste and high-level waste; and
- Transporting the low and high activity wastes to onsite interim storage facilities.

Phase II (full-scale production) activities would begin after completion of Phase I, last for approximately 30 years and would include:

- Constructing full-scale facilities to vitrify low-activity waste and vitrify high-level waste;
- Installing and operating tank retrieval systems to retrieve waste from all single-shell tanks, double-shell tanks, and miscellaneous underground storage tanks;
- Pretreating the waste by sludge washing and enhanced sludge washing followed by separations of the liquid and solids;
- Performing separations to remove selected radionuclides from the low-activity waste feed stream and transferring the waste to the high-level waste vitrification facility;
- Vitrifying the high-level waste stream and the low-activity waste stream;
- Packaging the high-level waste in canisters for onsite interim storage and future shipment to a national geologic repository; and
- Placing the immobilized low-activity waste in containers and placing the containers in onsite near-surface disposal facilities.

DOE also would continue to characterize the tank waste and perform technology development activities to reduce uncertainties associated with remediation, evaluate emerging technologies, and resolve regulatory compliance issues.

The principal advantages of the Phased Implementation alternative are

that it provides for retrieval of the waste, separation of the high- and low-activity waste constituents and immobilization of the waste. Separations processes would reduce the volume of high-level waste and eliminate the bulk of the contaminants in the low-activity waste stream. This alternative would permanently isolate the wastes from humans and the environment to the greatest extent practicable and provide for protection of public health and the environment by disposing of the bulk of the radionuclides offsite in a national geologic repository and isolating the low-activity waste through immobilization and disposal in onsite facilities. By using a phased approach, DOE will obtain additional information concerning the uncertainties associated with waste characteristics and the effectiveness of the retrieval, separations, and treatment technologies prior to constructing and operating full-scale facilities. Lessons learned from the demonstration phase, ongoing waste characterization, and technology development activities would be applied to Phase II, which may substantially improve the operating efficiency of the second phase and reduce construction and operating costs.

The principal disadvantage of this alternative is that it would involve slightly higher short-term impacts than the in situ and combination alternatives, though lower than the continued management alternatives. Short-term impacts include potential health impacts during Phases I and II from occupational, operational, and transportation accidents and radiation exposures to workers during normal operations. In addition, this alternative would disturb shrub-steppe habitat and may cause a short-term strain on public services during construction activities. This alternative would also cost more than the in situ alternatives.

Other Tank Waste Alternatives Considered

The Final EIS analyzed nine other alternatives for the tank waste. All of the alternatives considered include continuing the current tank farm operations to maintain the tanks and associated facilities until they are no longer needed for waste management. All of the alternatives (except No Action) include upgrading tank farm systems as identified for the Phased Implementation alternative. The following are the other alternatives addressed.

1. No Action

Perform minimum activities required for safe and secure management of the Hanford Site's tank waste with the current tank farm configuration during a 100-year period. This alternative would provide for continued storage and monitoring of tank waste. No construction or remediation activities would be performed under the No Action alternative.

The principal advantage of this alternative is that the short-term environmental impacts would be lower than other alternatives analyzed (except operational accidents which would be high due to the assumed 100-year operating period). The cost estimated for this alternative would be lower than most other alternatives. The degree of technical uncertainty associated with this alternative is low because it is a continuation of ongoing activities. Selection of this alternative would also allow time to develop new waste remediation technologies.

The principal disadvantage of this alternative is that it would result in the highest long-term environmental impacts. Because no action would be taken to immobilize or isolate the waste, the contaminants in the waste would migrate to the groundwater in a relatively short period of time, resulting in contamination of the groundwater far above accepted safe levels and drinking water standards. Persons consuming this contaminated groundwater would have a significant risk of contracting cancer. In addition, this alternative would not meet waste disposal laws, regulations, and policies. This alternative eventually would result in continued deterioration of the structural integrity of the tanks and an increased risk that an earthquake would cause a catastrophic release of tank contents to the environment and the potential for a large number of fatalities. Because all of the waste would remain in the tanks in an unstabilized form, there would be a significant human health risk to inadvertent intruders into the waste after any loss of administrative control of the Site.

2. Long-Term Management

Perform minimum activities required for safe and secure management of the Hanford Site's tank waste during the 100-year administrative control period. This alternative is similar to the No Action alternative, except that the waste transfer system would be upgraded and the double-shell tanks would be replaced twice during the assumed 100-year administrative control period to prevent the potential leakage of large volumes of liquid to the environment from the double-shell tanks. No waste remediation would be performed under this alternative.

The principal advantage of this alternative is the same as for the No Action alternative except that leaching of contaminants into the groundwater from the double-shell tanks would be delayed by 100 years due to the tank replacement program.

The principal disadvantages of this alternative are the same as for the No Action alternative except that the long-term impacts to the groundwater would be slightly lower than the No Action alternative.

3. In Situ Fill and Cap

Retrieve and evaporate liquid waste from the double-shell tanks, fill single- and double-shell tanks with gravel, fill miscellaneous tanks and ancillary equipment with grout, and cover the tank farms with a low permeability earthen surface barrier, disposing of all tank waste onsite.

The principal advantages of this alternative are that the short-term environmental impacts (accident fatalities, radiation exposures, and shrub-steppe habitat disturbance) would be low and the estimated cost would be lower than for all other alternatives. The degree of technical uncertainty associated with this alternative is low because it involves applying common technology, which has a high probability of achieving its projected level of effectiveness for most tanks.

The principal disadvantages of this alternative are that it would have relatively high long-term environmental impacts due to contaminants leaching into the groundwater where they could expose persons who might consume the groundwater, and it would not meet waste disposal laws, regulations, or policies. Because the actions taken for this alternative involve isolation but not immobilization of the waste, the contaminants would migrate to the groundwater over a long period of time and result in significant long-term impacts on public health and the environment. In addition, this alternative may not be feasible for those tanks that generate high levels of flammable gases because of the potential for sparks causing a fire in the tanks while filling with gravel. Other types of fill material may be necessary for these tanks. Because all of the waste except the liquid waste in the double-shell tanks would remain in the tanks in an unstabilized form, there would be a significant human health risk to inadvertent intruders into the waste

after any loss of administrative control of the Site.

4. In Situ Vitrification

Retrieve and evaporate liquid waste from the double-shell tanks, fill the tanks with sand, vitrify (melt to form glass) all of the tanks in place, and cover all of the tank farms with an earthen surface barrier to dispose of all tank waste onsite. This alternative would involve constructing tank farm confinement facilities to contain and collect the off-gasses generated during the vitrification process. The waste, tanks, and soil surrounding the tanks (including miscellaneous underground storage tanks) would be vitrified by using electricity to melt the soil and waste, which would solidify into a glass when cooled.

The principal advantages of this alternative are that the short- and long-term impacts would be relatively low. The short-term impacts such as occupational, operational, and transportation accidents would be lower because fewer personnel would be required to construct and operate the in situ vitrification systems. The long-term impacts would be low because the contaminants would be immobilized in glass, which would limit the leaching of contaminants to the groundwater.

The principal disadvantages of this alternative are that there is a high degree of technical uncertainty that the alternative would function as intended, and that, even if technically successful, would not produce a final waste form that would meet waste disposal laws, regulations, or policies. In situ vitrification has been performed on contaminated soil, but has not been used on the tank waste or at the scale needed to vitrify the large tanks.

5. Ex Situ No Separations

Retrieve waste from the single-shell, double-shell, and miscellaneous underground storage tanks, either vitrify or calcine (heat to temperatures below the melting point) the waste, and package the treated waste for interim onsite storage and eventual offsite disposal at a national geologic repository.

The principal advantages of this alternative are that the vitrification option would meet all regulatory requirements and both the vitrification and calcination options would result in disposal of all retrieved waste offsite at a national geologic repository. Because this alternative does not involve separations, the technical uncertainties are fewer than those associated with other ex situ alternatives that involve intermediate or extensive separations.

The principal disadvantages of this alternative are that the waste form (either soda-lime glass for vitrification or compacted powder for calcination) may not meet the current waste acceptance criteria at a national geologic repository and the volume of waste to be disposed of at a national geologic repository would be very large and would likely exceed the capacity of the first repository. The costs associated with disposing of all the waste at a national geologic repository make this the most expensive alternative.

6. Ex Situ Intermediate Separations

Retrieve waste from the single-shell, double-shell, and miscellaneous underground storage tanks and separate the waste into high-level and low-activity waste streams using sludge washing, enhanced sludge washing, and ion exchange, then vitrify the waste streams in separate facilities. Dispose of the low-activity waste onsite and the high-level waste offsite at a national geologic repository.

The principal advantages of this alternative are that it would meet all regulatory requirements and result in relatively low long-term impacts because the high-level waste would be disposed of offsite in a national geologic repository and the low-activity waste onsite would be immobilized and isolated in onsite disposal facilities covered with an earthen barrier.

The principal disadvantage of this alternative is that it involves a moderate level of technical uncertainty because the alternative would involve construction and operation of treatment facilities where some of the proposed technologies are first-of-a-kind or have not been demonstrated on Hanford Site tank waste. This alternative would involve a potential for higher short-term impacts than the in situ alternatives because of the nature and extent of the activities required for construction and operation of the full-scale waste treatment facilities. These impacts would include potential health impacts from occupational, operational, and transportation accidents and radiation exposures during normal operations.

7. Ex Situ Extensive Separations

Retrieve waste from the single-shell, double-shell, and miscellaneous underground storage tank waste and use a large number of complex chemical separations processes to separate the high-level waste components from the recovered tank waste. Vitrify the waste streams in separate facilities and dispose of the low-activity waste onsite and the high-level waste offsite at a national geologic repository.

The principal advantages of this alternative are that it would meet all regulatory requirements and, due to the extensive separations processes, would result in the smallest volume of high-level waste for offsite disposal. Due to the extent of the separations processes, the low-activity waste that would remain onsite would have lower radioactive contaminant concentrations than the other ex situ alternatives.

The principal disadvantages of this alternative are that it involves the highest degree of technical uncertainty and highest treatment cost among the ex situ alternatives because of the numerous complex separations processes. This alternative would involve slightly higher short-term impacts than the in situ and combination alternatives, though lower short-term impacts than the continued management alternatives. These impacts include potential health impacts from occupational, operational, and transportation accidents and radiation exposures during normal operations.

8. and 9. Ex Situ/In Situ Combination 1 (Alternative 8) Ex Situ/In Situ Combination 2 (Alternative 9)

Retrieve tank waste (approximately 50 percent of the waste volume for the Combination 1 alternative and 30 percent for the Combination 2 alternative based on long-term risks the contents of the various tanks pose to human health and the environment); separate the retrieved waste into high-level and low-activity waste streams using an intermediate level of separations; then vitrify the waste streams in separate facilities. Dispose of the low-activity waste onsite and the high-level waste at an offsite national geologic repository. Waste in tanks not selected for retrieval would be remediated identical to the In Situ Fill and Cap alternative.

The principal advantage of these alternatives is that they offer the opportunity to lower the remediation cost by remediating the waste in selected tanks based on waste characteristics and contribution to post-remediation risk. The waste that provides the greatest long-term potential human health risks would be remediated. The Combination 2 alternative would have lower remediation costs than the Combination 1 alternative because a smaller volume of waste would be processed. These alternatives would result in short-term impacts (occupational, operational, and transportation accidents and shrub-steppe habitat disturbance) that are generally lower than those for the ex situ alternatives because smaller

facilities and fewer personnel would be required to process a smaller volume of waste.

The principal disadvantages of these alternatives are that they would not meet waste disposal laws, regulations, and policies. The ex situ portion of these alternatives would have the same technical uncertainties as the Ex Situ Intermediate Separations alternative. The in situ portion of these alternatives would result in higher long-term impacts than the ex situ alternatives because the waste disposed of in situ would leach contaminants into the groundwater over a long period of time and expose persons who might consume the groundwater. The Combination 2 alternative would leave more waste disposed of in situ and result in higher long-term impacts than the Combination 1 alternative.

Environmentally Preferable Alternative—Tank Waste

Identifying environmental preferences among alternatives for the tank waste remediation program requires consideration of the short-term human health and environmental impacts, long-term human health and environmental impacts, and the associated uncertainties in the impact assessment process, including technology performance. There are alternatives that would result in low short-term impacts but relatively high long-term impacts, and identifying the environmentally preferable alternative(s) requires judgment concerning these impacts. Comparing short-term human health impacts with long-term human health impacts is complicated by the fact that short-term impacts can be estimated with a greater degree of certainty than long-term human health risks.

In making these comparisons, DOE considered that most estimated short-term impacts involve risks to workers during remediation that are voluntary and can be reduced by applying appropriate worker protection measures. In contrast, the estimated long-term impacts are involuntary in nature because they would result from inadvertent exposure of future populations to contaminant releases.

The In Situ Vitrification alternative would have lower human health and environmental impacts than the other alternatives, if this technology functioned adequately. This alternative would result in the lowest potential short-term human health impacts, other than the In Situ Fill and Cap alternative, and the lowest long-term human health and environmental impacts. However, in situ vitrification has never been performed at the scale necessary to remediate the Hanford tank waste and there is a high degree of technical uncertainty associated with this alternative. Even with extensive technology research and testing, it may not be feasible to develop this technology to the extent that it would function adequately. If this alternative did not function as designed, the long-term impacts on groundwater and future users of the groundwater would be higher. While the In Situ Fill and Cap alternative would result in the lowest short-term impacts, it also would have significant long-term impacts on the groundwater and future users of the groundwater.

On balance, the ex situ alternatives are environmentally preferable to in situ alternatives because they provide for the permanent isolation of contaminants from the human environment. Among the ex situ alternatives, Phased Implementation is environmentally preferable because it offers the best potential to reduce technology risks and uncertainties relevant to both short-term and long-term impacts, while also providing for treatment and disposal of tank wastes to the greatest extent technically and economically practicable.

Cesium and Strontium Capsules Alternatives Considered

For the purposes of analyzing impacts in the TWRS EIS, it was assumed that the cesium and strontium capsules will remain in the Waste Encapsulation and Storage Facility at the Hanford Site until ready for final disposition. The Waste Encapsulation and Storage Facility is being isolated from B Plant, which previously provided waste handling and utility support. B Plant is scheduled for deactivation.

No Action

No Action was identified in the Final EIS as the preferred alternative and includes the continued storage of the capsules in the Hanford Site Waste Encapsulation and Storage Facility for 10 years. The cesium and strontium capsules are currently classified as byproduct material and are therefore available for beneficial uses. If beneficial uses cannot be found, the capsules may be subject to management and disposal actions as high-level waste.

The principal advantage of the No Action alternative is that it allows DOE to evaluate potential commercial and medical uses for the cesium and strontium capsules rather than foreclosing these options by implementing a disposal alternative. This alternative also provides an opportunity for further study of long-term environmental impacts. DOE would reevaluate the preferred alternative after a determination is made on the potential for future use of cesium and strontium capsules.

The principal disadvantage of this alternative is that it would not result in the near-term disposal of the capsules. The high costs of storing the capsules would continue. The cost and impacts of disposal would be delayed until some time in the future, if appropriate uses for the capsules are not developed.

Onsite Disposal

Overpack the cesium and strontium capsules in canisters and dispose of them onsite in a newly constructed shallow drywell disposal facility.

The principal advantage of this alternative is that it is the only alternative that would allow near-term disposal of the capsules because it would not rely on the construction of a national geologic high-level waste repository, which may not be available until after the year 2015.

The principal disadvantage of this alternative is that it would not meet the requirements of the Resource Conservation and Recovery Act for hazardous waste or DOE policy for disposal of readily retrievable high-level waste. The capsules would be disposed of in a near-surface facility where they would be more accessible to inadvertent human intrusion until the cesium and strontium decayed to non-radioactive elements.

Overpack and Ship

Overpack the cesium and strontium capsules into canisters, place the canisters into Hanford Multi-Purpose Canisters for interim storage, and store the packaged capsules onsite pending offsite disposal at a national geologic repository.

The principal advantage of this alternative is that it would provide for offsite disposal of the capsules in compliance with all regulatory requirements.

The principal disadvantage of this alternative is that the capsules may not meet waste acceptance criteria at a national geologic repository.

Vitrify With Tank Waste

Remove capsule contents, vitrify with the high-level tank waste, and dispose of offsite at a national geologic repository.

The principal advantages of this alternative are that it would meet all regulatory requirements and the currently planned waste acceptance requirements for a national geologic repository. This alternative is dependent

on selecting one of the tank waste alternatives that includes a high-level waste vitrification facility, which would be used to vitrify the cesium and strontium.

Environmentally Preferable Alternative—Cesium and Strontium Capsules

All of the alternatives for remediation of the cesium and strontium capsules are estimated to result in low environmental impacts. There would be no occupational fatalities or increased incidences of cancer or fatal chemical exposures associated with normal operations. There would be no or low adverse impacts on surface waters or groundwater, soils, air quality, transportation networks, noise levels, visual resources, socioeconomic conditions, resource availability, or land use. The No Action, Overpack and Ship, and Vitrify with Tank Waste alternatives would have slightly lower impacts on shrub-steppe habitats than the Onsite Disposal alternative and a slightly lower risk of a fatal accident. Assuming that the capsules would meet waste acceptance criteria at a national geologic repository the Overpack and Ship alternative would result in slightly lower impacts than the other alternatives and is therefore the environmentally preferable alternative.

Decision

Tank Waste

Description of Alternative Selected

DOE has decided to implement the Phased Implementation alternative for the tank waste. The Phased Implementation alternative strikes an appropriate balance among potential short- and long-term environmental impacts, stakeholder interests, regulatory requirements and agreements, costs, managing technical uncertainties, and the recommendations received from other interested parties.

While carrying out this decision, DOE will continually evaluate new information relative to the tank waste remediation program. DOE also intends to conduct formal evaluations of new information relative to the tank waste remediation program at three key points over the next eight years under its NEPA regulations (10 CFR 1021.314), with an appropriate level of public involvement, to ensure that DOE stays on a correct course for managing and remediating the waste.

As remediation proceeds in the coming years, DOE will learn more about management and remediation of the tank waste and ways to protect public and worker health and the environment. Within this time frame, DOE will obtain additional information on the effectiveness of retrieval technologies, characteristics of the tank wastes, effectiveness of waste separation and immobilization techniques, and more definitive data on the costs of retrieval, separations, and immobilization of the waste. Formal reevaluations will incorporate the latest information on these topics. DOE will conduct these formal evaluations of the entire TWRS program at the following stages: (1) before proceeding into Privatization Phase I Part B (scheduled for May 1998); (2) prior to the start of hot operations of Privatization Phase I Part B (scheduled for December 2002/ December 2003); and (3) before deciding to proceed with Privatization Phase II (scheduled for December 2005). In conducting these reviews, DOE will seek the advice of independent experts from the scientific and financial community, such as the National Academy of Sciences which will focus on the expected performance and the costs of waste treatment. DOE has established a TWRS Privatization Review Board consisting of Senior DOE representatives to provide on-going assistance and interactive oversight of the review of Part A deliverables and discussions with the contractors.

Informal evaluations also will be conducted as the information warrants. These formal and informal evaluations will help DOE to determine whether previous decisions need to be changed.

The Phased Implementation approach allows DOE to start remediating waste earlier than previously planned. With this approach, retrieval and processing of waste will begin on a small scale so that systems can be improved as knowledge is gained. This approach also permits DOE to continue research and development in critical areas, such as improved robotic retrieval systems, that may result in improved methods to reduce tank leaks during retrieval, and methods to remove residual waste that is difficult to retrieve.

The components of the demonstration phase (Phase I) will include: (1) continuing to safely manage the tank waste; (2) constructing and operating demonstration facilities; (3) collecting additional information through tank waste and vadose zone characterization; and (4) performing demonstrations of technologies that have the potential to reduce uncertainties associated with the TWRS program.

Continuing to safely manage the tank farms includes replacement of certain waste transfer piping and routine maintenance activities for tank farm instrumentation, ventilation, and electrical systems. Ongoing activities will include conducting environmental and safety related monitoring, removing pumpable liquids from the single-shell tanks, mitigating flammable gas safety hazards, and transferring currently stored waste and newly generated waste using the replacement cross-site transfer system, rail cars, and tanker trucks. DOE also plans to upgrade certain instrumentation, tank ventilation, and electrical system to upgrade the regulatory compliance status of the current facilities. The environmental impacts of these actions were not assessed in the TWRS EIS because the activities to be performed had not been sufficiently defined. DOE will evaluate the impacts of these actions in future NEPA analyses.

The demonstration phase, which will last approximately 10 years, includes the retrieval and treatment of a portion of the waste from the double-shell and single-shell tanks. The waste will be separated into low-activity waste and high-level waste through physical and chemical processes and then treated in demonstration-scale facilities. Vitrified high-level waste will be placed in interim storage at the Canister Storage Building pending future disposal at a national geologic repository. Immobilized low-activity waste will be prepared for future onsite disposal in existing grout vaults and similarly designed disposal facilities.

During the demonstration phase, DOE will conduct many activities to reduce the uncertainties associated with certain aspects of the project. For example, DOE will obtain extensive operational and cost data on a variety of issues by retrieving waste for treatment and constructing and operating the demonstration-scale facilities. DOE also will obtain more detailed information on the characteristics of the tank waste and potential impacts on groundwater by continuing to collect data through the existing tank waste and vadose zone characterization programs. Further, DOE will conduct a project known as the Hanford Tanks Initiative that will provide data on single-shell tank residual characteristics, single-shell tank retrieval technologies, tank residual removal technologies, and tank closure technologies. In addition, DOE will further investigate technologies that have the potential to reduce the uncertainties of the TWRS project, including evaluating alternative tank fill material for use during closure, demonstrating the effectiveness and efficiency of waste retrieval with sluicing technology, and evaluating a variety of other technologies through DOE's complex-wide technology

development programs. DOE also will prepare appropriate further NEPA documentation before making decisions on closure of the tank farms. This documentation will address the final disposition of the tanks, associated equipment, soils, and groundwater, and will integrate tank farm closure with tank waste remediation and other remedial action activities.

Phase II of the Phased Implementation alternative will begin after Phase I and will last approximately 30 years. Phase II will consist of continuing to safely manage the tank waste and constructing and operating full-scale facilities to treat the remainder of the tank waste. The tank waste will be retrieved and separated into low-activity waste and high-level waste. The low-activity waste will be immobilized and disposed of onsite in near-surface disposal facilities. The high-level waste will be vitrified, temporarily stored onsite, and transported offsite for disposal in a national geologic repository. DOE will use the lessons learned from the demonstration phase and the information obtained from further characterization and technology development activities to optimize operating efficiencies during Phase II and reduce construction and operating costs. DOE will continue to evaluate the path forward for the tank waste remediation program as additional data and technology development activities provide information relative to key technical and regulatory issues.

DOE currently plans to implement parts of this alternative through a privatization initiative whereby private companies will perform certain aspects of the remediation in an effort to use competition within the marketplace to bring new ideas and concepts to waste remediation and reduce project costs. The goal of privatization is to streamline the TWRS mission, transfer a share of the responsibility, accountability, and liability for successful performance to industry, improve performance, and reduce costs without sacrificing worker and public safety or environmental protection. On September 25, 1996, DOE issued contracts to two companies to initiate the design process for Phase I, Part A. Any of the contractors authorized to proceed to start Part B is anticipated to follow the same general approach described in the EIS for Phase I, Part B of the Phased Implementation alternative, including separating the waste into low-activity waste and high-level waste streams, vitrifying the high-level waste, and using high-temperature processes to immobilize low-activity waste. Both contractors' current plans include vitrifying low-activity waste upon approval to proceed with Phase I, Part B.

Before issuing these contracts DOE independently evaluated the environmental data and analyses submitted by the contractors and prepared a confidential environmental critique of the potential environmental impacts in accordance with DOE NEPA regulation 10 CFR 1021.216. After issuing the contracts, DOE prepared a publicly available environmental synopsis, based on the critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. This evaluation showed that the two proposals would have similar overall environmental impacts and that the impacts would be less than or approximately the same as the impacts described for Phase I of the Phased Implementation alternative. The environmental synopsis has been filed with the Environmental Protection Agency and is available at the DOE Public Reading Rooms and Information Repositories listed at the end of this Record of Decision. DOE will require the selected contractors to submit further environmental information and analysis and will use the additional information, as appropriate, to assist in the NEPA compliance process, including a determination under 10 CFR 1021.314 of the potential need for future NEPA analysis.

Basis for Selection

DOE has determined that through the many years of research and development throughout the DOE complex and specific studies on Hanford Site tank waste remediation, the technical uncertainties have been reduced to a manageable level. DOE has determined that the risks associated with proceeding with remediation are less than the risks of future releases of contaminants to the groundwater and of accidents in unremediated tanks that are deteriorating structurally. The cost of continuing to manage the unremediated tank waste facilities is high.

DOE has determined that it is necessary to retrieve the waste from the tanks to meet regulatory requirements, avoid future long-term releases to the groundwater that would threaten human health and the environment, and reduce health impacts to potential inadvertent intruders into the waste if administrative control of the Site were lost. An intermediate level of separating the waste into low-activity waste and high-level waste was selected because of the high disposal costs of alternatives with low levels of separation and the high degree of technical uncertainty associated with alternatives with extensive levels of separations. To address the remaining technical uncertainties that exist with the tank waste remediation program, the phased implementation approach was selected to provide the flexibility necessary to make midcourse adjustments to the remediation plans based on future characterization data, technology development, and technical and cost data developed during Phase I.

The Phased Implementation alternative provides for the permanent isolation of the waste from humans and the environment to the greatest extent practicable and protection of public health and the environment. A high percentage of the radionuclides will be disposed of offsite in a national geologic repository, which provides a high degree of permanent isolation of the most hazardous waste. Releases of contaminants to the groundwater at the Hanford Site will be reduced to the greatest extent practicable. The waste disposed of onsite will be isolated from humans and the environment by immobilizing the low-activity waste and placing it in near-surface disposal facilities covered with an earthen surface barrier.

The Phased Implementation alternative provides a balance among key factors that influenced the evaluation of the alternatives; short-term impacts to human health and the environment, long-term impacts to human health and the environment, managing the uncertainties associated with the waste characteristics and treatment technologies, costs, and compliance with regulatory requirements. It also provides a balance between the need to proceed with remediation and the potential advantages of delaying remediation to incorporate future technology developments. This alternative allows DOE to meet all regulatory requirements and reflects the values and concerns of many stakeholders.

Mitigation Measures

This decision adopts all practicable measures to avoid or minimize adverse environmental impacts that may result from the Phased Implementation alternative. These measures many of which are routine, include the following.

- All DOE nuclear facilities will be designed, constructed, and operated in compliance with the comprehensive set of DOE or commercial requirements that have been established to protect public health and the environment. These

requirements encompass a wide variety of areas, including radiation protection, facility design criteria, fire protection, emergency preparedness and response, and operational safety requirements;

- Measures will be taken to protect construction and operations personnel from occupational hazards and minimize occupational exposures to radioactive and chemical hazards;
- Emergency response plans will be developed to allow rapid response to potentially dangerous unplanned events;
- Water and other surface sprays will be used to control dust emissions, especially at borrow sites, gravel or dirt haul roads, and during construction earthwork;
- Areas for new facilities will be selected to minimize environmental impacts to the extent practicable;
- Pollution control or treatment will be used to reduce or eliminate releases of contaminants to the environment and meet regulatory standards;
- Extensive environmental monitoring systems will be implemented to continually monitor potential releases to the environment;
- All newly disturbed areas will be recontoured to conform with the surrounding terrain and revegetated with locally derived native plant species consistent with Sitewide biological mitigation plans;
- Historic, prehistoric, and cultural resource surveys will be performed for any undisturbed areas to be impacted;
- Potential impacts to shrub-steppe habitat and cultural resources will be among the factors considered in a NEPA analysis to support the site selection process for facilities and earthen borrow sites; and
- Consultation with Tribal Nations and government agencies will be performed throughout the planning process to address potential impacts to shrub-steppe habitat, religious sites, natural resources, and medicinal plants.

Mitigation measures will be refined and presented in the Tank Waste Remediation Mitigation Action Plan. Tribal Nations and agencies will be consulted, as appropriate, during preparation of the Mitigation Action Plan.

Cesium and Strontium Capsules

DOE has decided to defer the decision on the disposition of the cesium and strontium capsules for up to two years. In effect, DOE will implement the No Action alternative until a final disposition decision is made and implemented. The encapsulated cesium and strontium have potential value as commercial and medical irradiation or heat sources, and implementing disposal alternatives would foreclose options for these applications. DOE is evaluating the potential for commercial and medical uses. In addition, DOE is considering mixing the cesium with surplus plutonium; the cesium would serve as a radiation barrier and be immobilized with the plutonium. Mixing the cesium with the plutonium would enhance nuclear materials security by making future use of the plutonium by unauthorized persons very hazardous and difficult. DOE will reevaluate the decision on the disposition of the capsules after determinations are made on the potential for future use of cesium and strontium. DOE is preparing a Cesium and Strontium Management Plan that will address alternatives for beneficial uses of the capsules prior to final disposition. If DOE decides not to use the cesium and strontium for any of these purposes, one of the alternatives for permanent disposal of the capsules will be selected and DOE will supplement this Record of Decision. Before making such a decision, DOE intends to further study disposal alternatives to resolve uncertainties and better understand long-term impacts, as recommended by the National Research Council (see Appendix).

Comments on the Draft EIS and Agency Responses

DOE and Ecology received comments on the Draft EIS from 102 individuals, organizations, agencies, or Tribal Nations including the Washington State Department of Wildlife, Oregon State Department of Energy, Nez Perce Tribe, Yakama Indian Nation, and the Confederated Tribes of the Umatilla Indian Reservation. All comments received were addressed in the Final EIS, Volume Six, Appendix L, and revisions to the Final EIS were made, as appropriate, to address applicable comments. A complete copy of all comments received on the Draft EIS is available in each of the DOE Public Reading Rooms and Information Repositories at the locations listed at the end of this Record of Decision.

Comments Received After Publication of the Final EIS and DOE Responses

DOE received comments from the Washington State Department of Fish and Wildlife on the Final EIS and comments from the National Research Council on the Draft EIS after publication of the Final EIS. A summary of these comments and DOE's responses is attached as an appendix to this Record of Decision. These comments were considered in the preparation of this Record of Decision.

DOE Public Reading Rooms and Information Repositories

- University of Washington, Suzzallo Library, Government Publications Room, Seattle, WA 98185. (206) 685–9855, Monday–Thursday, 9 a.m. to 8 p.m.; Friday and Saturday, 9 a.m. to 5 p.m.
- Gonzaga University, Foley Center, E. 502 Boone, Spokane, WA 99258. (509) 328–4220 ext. 3829, Monday–Thursday, 8 a.m. to midnight, Friday, 8 a.m. to 9 p.m.; Saturday, 9 a.m. to 9 p.m.; Sunday, 11 a.m. to midnight.
- U.S. Department of Energy Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130W, Richland, WA 99352, (509) 376–8583, Monday–Friday, 10 a.m. to 4 p.m.
- Portland State University, Bradford Price Millar Library, Science and Engineering Floor, SW Harrison and Park, Portland, OR 97207, (503) 725–3690, Monday–Friday, 8 a.m. to 10 p.m.; Saturday, 10 a.m. to 10 p.m.; Sunday, 11 a.m. to 10 p.m.
- U.S. Department of Energy, Headquarters, Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, Monday–Friday, 9 a.m. to 4 p.m.

A copy of the Record of Decision is also available via the Internet at www.hanford.gov/eis/twrseis.htm and http://tis-nt.eh.doe.gov/nepa.

Issued in Washington, DC, this day, February 20, 1997.

Alvin Alm,

Assistant Secretary for Environmental Management.

Appendix—Comments Received After Publication of the Final EIS

The U.S. Department of Energy (DOE) received comments and recommendations from the National Research Council and the Washington State Department of Fish and Wildlife after publication of the Final Environmental Impact Statement (EIS). The following is a summary of these comments and DOE's responses.

National Research Council Comments

On March 4, 1996, DOE requested that the National Research Council (Council), Committee on Remediation of Buried and Tank Waste, review the Tank Waste Remediation System (TWRS) Draft EIS. DOE received the Council's comments and recommendations regarding the Draft EIS on September 6, 1996 (after the Final EIS had been published) in a report entitled ''The Hanford Tanks:

Environmental Impacts and Policy Choices''. Although this report was issued too late to be considered in the Final EIS, DOE did consider the Council's comments in the preparation of this Record of Decision.

DOE generally agrees with the comments and recommendations made by the Council. Because several other commentors on the Draft EIS identified similar concerns, many of the Council's comments and recommendations were incorporated in the Final EIS prior to receipt of the Council's report. DOE believes the Record of Decision reflects stakeholder values regarding the need for action, provides a balance among short- and long-term environmental impacts, meets regulatory requirements and agreements, and addresses technical uncertainties, while also accommodating, to the extent possible, the underlying concern of the Council regarding the need for phased decision making.

The following is a summary of the National Research Council's comments and DOE's responses.

Comment 1: Uncertainties, both stated and unstated, concerning the Hanford wastes, the environment, and the remediation processes are found throughout the DEIS. Significant uncertainties exist in the areas of technology, costs, performance, regulatory environment, future land use, and health and environmental risks. Among the issues that remain uncertain are:

- Effectiveness in practice of technologies to remove and treat waste from tanks,
- Costs of operations and offsite waste disposal,
- Future policy and regulatory environment,
- Characterization of tank wastes,
- Relation between tank waste removal, remediation of the surrounding environment, and ultimate land use at the site, and
- Long-term risks associated with various alternatives for treating and processing the tank wastes, both in relation to residues left on site and risks transferred offsite when processed wastes are moved to a national geologic repository.

The preferred Phased Implementation alternative presented in the DEIS does not adequately address all of the uncertainties that make it difficult to decide how to complete remediation of the tanks. During Phase I, cesium and technetium, the most troublesome elements in a vitrifier, are to be removed from the high-level waste that is sent to the pilot vitrification plant, potentially limiting the value of information obtained from the pilot plant operations. This may also delay a decision on the final waste form for these elements.

Plans for building a pilot plant should proceed, but in the context of a phased decision strategy that does not preclude processing of wastes other than the double-shell tank supernatant or producing waste forms other than the glass currently planned.

Response 1: DOE agrees with the Council that there are substantial uncertainties associated with the tank waste remediation program. In response to similar comments, DOE revised the EIS to enhance the discussion of uncertainties, including the relevance of the uncertainties in the evaluation of alternatives. The Final EIS provides an extensive discussion on uncertainties in Appendix K, which includes DOE's detailed evaluation of the uncertainties and impacts associated with the tank waste remediation program alternatives. In light of the uncertainties related to the remediation of tank waste, DOE has committed to reevaluate the program as DOE continues to learn from these activities to ensure that DOE will stay on a correct course for managing the tank wastes.

The Council placed particular emphasis on recommending the use of a ''phased decision strategy'' because of the technical uncertainties in tank waste management. DOE has decided to implement the Phased Implementation alternative, which DOE believes will achieve many of the goals of the phased decision strategy recommended by the Council. DOE believes that the many years of technology evaluations throughout the DOE Complex have reduced the uncertainties to a manageable level, and the risks of proceeding with remediation are less than the risks of further releases of contaminants from the tanks and the potential for accidents in unremediated tanks. In addition, the cost of continuing to manage the tank waste in facilities that have exceeded their design life are high. DOE believes the Phased Implementation alternative provides adequate flexibility to accommodate changes in the tank waste remediation program as additional information is developed. Responses to the Council's other comments, below, provide additional detail on how DOE intends to reduce the technical uncertainties while proceeding with the Phased Implementation alternative.

Phase I of the Phased Implementation alternative includes both low-activity and high-level waste treatment and immobilization. Any radionuclides separated from the low-activity waste feed stream, including cesium and technetium, will be vitrified in the high-level waste facility. This will provide important information on the performance of the separations process and of vitrification of troublesome elements like cesium and technetium.

By performing Phase I of the Phased Implementation alternative and proceeding with other technology development projects and tank waste characterization, the uncertainties associated with the tank waste program will be reduced further. Initiatives that DOE is pursuing to reduce uncertainties in support of the TWRS program include:

- The Hanford Tanks Initiative, which will provide data on characterization of tank residuals, technologies for waste retrieval, technologies for removing tank residuals, and criteria for closing tanks;
- Completion of the tank waste characterization program, which will provide data relative to tank waste safety issues and the contents of the tanks;
- Determination of the level of contamination in the vadose zone;
- Development of a comprehensive plan to integrate tank waste remediation with tank farm closure and other remediation activities related with the TWRS program;
- Integration of TWRS program implementation with the plans for developing a national geologic repository for high-level waste;
- Demonstrations of the efficiency and effectiveness of retrieval sluicing technology to support the tank waste remediation activities; and
- Demonstrations of various tank waste separations and treatment processes.

Comment 2: The DEIS surveyed a wide range of remediation options, including strategies in which tanks with varying contents are treated differently. However, the committee believes that additional alternatives for management of the tank wastes need to be explored in parallel, using a phased decision strategy like the one outlined in this report. Such a strategy would provide flexibility in the event that specific, preferred technologies or management approaches do not perform as anticipated or that innovative waste management and remediation technologies emerge. Among additional options that should be analyzed are (1) in-tank waste stabilization methods that are intermediate between in situ vitrification and filling of the tanks with gravel, (2) subsurface barriers that could contain leakage from tanks, and (3) selective partial removal of wastes from tanks, with subsequent stabilization of

residues, using the same range of treatment technologies as in the alternatives involving complete removal of wastes.

When funding is constrained, it is more difficult to devote resources to the continued development of backup options. However, considering the uncertainty in the cost and performances of the technologies required for the preferred alternative, a time period during which funding is constrained is precisely the wrong time to drop work on alternatives that might achieve satisfactory results at a significantly lower cost. Having such alternatives available could allow remediation to proceed expeditiously, even if funding constraints prevent timely implementation of the currently preferred alternative.

Response 2: As discussed in the response to comment 1, DOE agrees that significant uncertainties exist in the tank waste remediation program and that the strategy selected needs to be flexible to respond to new information and the results of research and development efforts. Additional alternatives and refinements of alternatives need to be developed and evaluated.

The Council's report recommends a ''phased decision strategy,'' while DOE's preferred alternative is the ''Phased Implementation alternative.'' There are important similarities and differences between these two approaches. Under the Council's phased decision strategy, the first phase would identify and develop alternative approaches to remediate the tank waste. Decisions on alternatives for subsequent phases would be deferred until information from the first phase is evaluated. This approach has the advantage of not prematurely foreclosing options enabling DOE to further study and develop technologies and that might reduce cost and/or risk. It has the disadvantage of leaving the total cost, schedule, and final outcome highly uncertain. Under DOE's Phased Implementation alternative, the complete path forward for tank waste remediation has been determined, while recognizing that the path can be modified as new information becomes available. However, DOE has committed to conduct formal and informal reviews with the intent to mitigate the concern of making long-term decisions in the near-term.

The DOE Phased Implementation decision addresses current regulatory requirements and cleanup commitments while maintaining the flexibility necessary to modify the TWRS program if emerging information (e.g., new characterization data, technology breakthroughs, etc.) indicates there is a need to change the direction of the program. At the same time, technology development activities, such as the Hanford Tanks Initiative, will continue, in order to provide alternative paths if preferred technologies do not perform as anticipated. In addition to current programs, the Conference Report for the Energy and Water Development Appropriations Act, 1997 recommends up to $15 million in technology development activities to support the tank waste program.

Other activities, which are critical to the overall TWRS program, will be conducted by DOE throughout Phase I. These activities include single-shell tank waste retrieval, developing methods for quantifying and characterizing the waste residuals left in the tanks following retrieval, and studying the leakage rate of tank wastes during the retrieval process. Contractors will have access to technologies being developed by other DOE programs and will be able to use these technologies if appropriate.

The Final EIS evaluated possible alternatives for remediating the tank waste. There are, as the Council noted, a great number of variations or combinations of alternatives; DOE could not evaluate all such combinations in the EIS. Rather, DOE evaluated a complete range of reasonable tank waste management options, and thereby obtained adequate information for the strategic choice of direction made in this ROD. The use of alternate fill material for tank closure was not evaluated directly, but such alternatives are qualitatively within the range of alternatives analyzed in detail, and DOE was adequately informed about them for the purposes of this EIS. These alternatives will be addressed more directly in future NEPA analysis on tank closure. In this EIS, DOE considered the use of subsurface barriers as a potential mitigation measure during tank waste retrieval. Subsurface barriers were also evaluated in a Feasibility Study completed in 1995. Additional development work is being performed by DOE, and if promising new developments occur, DOE will reconsider the application of subsurface barriers for the tanks. Two alternatives for partial retrieval of the wastes that were similar to the selective partial retrieval alternative that the Council recommended be analyzed were included in the alternatives analyzed. DOE will continue to reevaluate these and other alternatives as more information becomes available.

In situ disposal of single-shell tank wastes and in-tank stabilization of tanks with residuals (not removed by retrieval) have been the subject of previous studies and were evaluated as part of the Systems Engineering Study for the Closure of Single-Shell Tanks. Alternatives for closing tanks with residual waste were evaluated in the Engineering Study of Tank Fill Alternatives for Closure of Single-Shell Tanks released in September 1996. Additional studies supporting stabilization of tanks with residual waste remaining following completion of retrieval operations are planned during Fiscal Year 1997 and Fiscal Year 1998 as part of the Hanford Tanks Initiative.

In addition to the two ex situ/in situ tank waste disposal alternatives that were evaluated in the TWRS EIS, selective partial removal of wastes from tanks, using a risk-based approach, was evaluated in the study entitled ''Remediation and Cleanout Levels for Hanford Site Single-Shell Tanks'' (Westinghouse Hanford Company, 1995, WHC–SD–WM–TI–711).

This Record of Decision adopts a long-term strategy that will focus efforts on achieving the ultimate TWRS remediation goals while continuing to characterize tank wastes, evaluate new technologies and improve risk assessments. DOE believes that its past studies have reduced the uncertainties enough to enable DOE to make a decision on a long-term tank waste remediation strategy. Although this approach differs from the phased decision strategy recommended by the Council, DOE intends to implement its decision in a manner that is flexible enough to accommodate appropriate mid-course corrections in the tank waste remediation strategy, based on lessons learned in the pilot studies or from other new information.

Comment 3: The scope of the DEIS also has significant limitations. Because the DEIS does not address remediation of the tanks themselves and associated environmental contamination, the alternatives it considers for tank waste remediation are not defined well enough. In addition, the connections between tank remediation alternatives and other cleanup activities at the Hanford Site are not taken into account. Because tank waste remediation alternatives are analyzed and evaluated in isolation from other geographically-related contamination at the Hanford Site, information about risks and costs in the DEIS is difficult to place in a proper perspective.

Response 3: DOE agrees with the Council's observation that there is a

need to integrate remediation of the tank waste with future tank closure decisions and other geographically related remedial actions at the Hanford Site. The Final EIS addresses tank farm closure and other geographically related contamination and remediation activities to the extent possible with current information and to the extent necessary for DOE to make decisions concerning tank waste remediation. The EIS presents (1) information relative to closure to provide the public and decision makers with information on how decisions made now may affect future decisions on closure; (2) information on which alternatives would preclude the future selection of clean closure for the tank farms; and (3) information on cumulative impacts, including the effects of other site activities. This information provides a context for understanding the strategic decisions, now ripe, that are the focus of this EIS. To support the analysis, DOE used closure of a landfill as a representative closure scenario for each alternative, thus providing for a meaningful comparison of the alternatives. DOE intends to prepare a comprehensive plan to integrate tank waste remediation with tank farm closure activities and other Hanford Site remediation programs.

Comment 4: Decisions regarding tank remediation must consider risk, cost, and technical feasibility. Where risks are involved, care should be taken to present a range of potential risks, including expected or most likely estimates as well as the upper-bound estimates presented in the DEIS. While upper-bound estimates may give confidence that actual impacts will not exceed those presented in the DEIS from a worst-case perspective, the inherent uncertainties in risk assessments can distort the comparison of alternatives. This is of particular concern when the upper-bound estimates are derived from a cascade of parameters, much of which was also derived on an upper-bound basis.

While the committee recognizes the utility of quantitative risk assessment in the comparison of remedial alternatives, the limitations of analysis must be underscored. Given the complexity of the Hanford tank farms, many of the potential uncertainties cannot be measured, quantified, or expressed through statistically derived estimates. According to the 1996 National Research Council report Understanding Risk, the 1996 U.S. Environmental Protection Agency report Proposed Guidelines for Carcinogen Risk Assessment, and a recent draft report by the Commission on Risk Assessment and Risk Management, characterization of risk should be both qualitative and quantitative. In this case, qualitative information should include a range of informed views on the risks and the evidence that supports them, the risk likelihood, and the magnitude of uncertainty. Such evaluations of risk should be based on deliberative scientific processes that clarify the concerns of interested and affected parties to prevent avoidable errors, provide a balanced understanding of the state of knowledge, and ensure broad participation in the decision-making process.

Response 4: DOE agrees with these comments and has modified the EIS accordingly in response to similar comments on the Draft EIS received during the public comment period. For example, DOE believes that characterization of the risk should be quantitative when possible and qualitative when parameters are uncertain by more than an order of magnitude. The Final EIS presents the ''expected'', or ''nominal'' ranges of risk and upper-bound estimates, and includes (in Appendix E) detailed analysis of uncertainties.

Comment 5: It should be expected that the environmental regulations governing the tank wastes, and the Hanford Site in general, will change over the time during which waste management and environmental remediation occur. DOE should work with the appropriate entities to ensure that future regulatory changes and the future selection of tank remediation approaches are on convergent paths. The development, testing, and analysis of alternatives during the first phase should continue unconstrained by current regulatory requirements and should examine currently untested technologies.

Response 5: DOE agrees that ongoing dialogue with the regulators is necessary to making sound tank waste management decisions. DOE continues to work with the Federal and State regulatory authorities and with the stakeholders to share evolving information regarding impacts and technologies. Toward that end, DOE developed the reasonable alternatives to be analyzed in the EIS on a scientific and engineering basis, then evaluated the alternatives for compliance with regulations. Only four of the ten alternatives addressed in the EIS could be implemented consistent with existing Federal and State regulations. The Record of Decision, however, selects a compliant approach.

Comment 6: Concerning the management and disposal of the cesium and strontium capsules and of the miscellaneous underground storage tanks, the committee found that the DEIS lacks enough substantive information for an evaluation of the proposed remediation strategies. Over 99 percent of the tank wastes is in the single-shell and double-shell tanks, and that is where the greatest potential for health and environmental risk exists. However, the extremely high concentration of radioactivity and the nature of the materials in the capsules necessitate a more thorough discussion of their treatment, disposal, and environmental impact. There are serious deficiencies in the attention given to the long-term changes in the chemical and isotopic composition of the cesium and strontium capsules. The large number and wide distribution of the miscellaneous underground storage tanks make a more complete discussion of their management necessary.

Response 6: DOE agrees with the Council that there is not enough substantive information regarding the cesium and strontium capsules to make a long-term decision on their final disposition. DOE also wants to evaluate potential beneficial uses of the capsules and has decided to defer any disposition of the capsules. In the meanwhile, a Cesium and Strontium Management Plan is currently being prepared by DOE that will address alternatives for beneficial uses of the capsules prior to final disposition. As part of the plan, DOE will continue to collect and analyze information regarding the capsules to reduce uncertainties and better understand long-term impacts, and to ensure that the long-term decision is appropriate.

With regard to the miscellaneous underground storage tanks, DOE believes, based on currently available information, that the waste contained in the miscellaneous underground storage tanks is similar to the waste contained in the single-shell tanks. Because the miscellaneous underground storage tanks represent a small percentage (0.5 percent) of the overall waste volume, the potential long-term impacts posed by the miscellaneous underground storage tanks are within the range of impacts calculated for the single-shell tanks and double-shell tanks. The short-term and long-term impacts associated with the miscellaneous underground storage tanks for activities such as waste retrieval and transfer were analyzed in the EIS.

Comment 7: The proper approach to decision making for tank farm cleanup is to use a phased decision strategy in which some cleanup activities would proceed in the first phase while

important information gaps are filled concurrently to define identified remediation alternatives more clearly, and possibly to identify new and better ones. As part of this strategy, periodic independent scientific and technical expert reviews should be conducted so that deficiencies may be recognized and midcourse corrections be made in the operational program.

Response 7: DOE agrees with the Council that periodic independent scientific and technical expert reviews are essential to the success of the TWRS program. While carrying out the current decisions, DOE will continually evaluate new information relative to the tank waste remediation program. DOE also intends to conduct formal evaluations of new information relative to the tank waste remediation program at three key points over the next eight years under its NEPA regulations (10 CFR 1021.314), with an appropriate level of public involvement, to ensure that DOE will stay on a correct course for managing and remediating the waste. As remediation proceeds in the coming years, DOE will learn more about management and remediation of the tank waste and ways to protect public and worker health and the environment. Within this time frame, DOE will obtain additional information on the effectiveness of retrieval technologies, characteristics of the tank wastes, effectiveness of waste separation and immobilization techniques, and more definitive data on the costs of retrieval, separations, and immobilization of the waste. These formal reevaluations will incorporate the latest information on these topics. DOE will conduct these formal evaluations of the entire TWRS program at the following stages: (1) before proceeding into Privatization Phase I Part B (scheduled for May 1998); (2) prior to the start of hot operations of Privatization Phase I Part B (scheduled for December 2002/December 2003); and (3) before deciding to proceed with Privatization Phase II (scheduled for December 2005). In conducting these reviews, DOE will seek the advice of independent experts from the scientific and financial community, such as the National Academy of Sciences which will focus on performance criteria and the costs of waste treatment. DOE has established a TWRS Privatization Review Board consisting of Senior DOE representatives to provide on-going assistance and interactive oversight of the review of Part A deliverables and discussions with the contractors.

Informal evaluations also will be conducted as the information warrants. These formal and informal evaluations will help DOE to determine whether previous decisions need to be changed.

Washington State Department of Fish and Wildlife Comment

Comment: The Washington State Department of Fish and Wildlife recommends that the following language be included in the Record of Decision:

''The site selection of the precise location of remediation facilities for the selected alternative shall be subject to future supplemental NEPA analysis. This supplemental NEPA analysis shall commit to a supplemental Mitigation Action Plan. The Mitigation Action Plan and supplemental Mitigation Action Plan will be prepared in consultation with the Washington State Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, with input from the Hanford Site's Natural Resource Trustee Council.''

''Impacts to State priority shrub-steppe habitat would be one of the evaluation criteria used in site selection. The site selection process would include the following hierarchy of measures:

- Avoid priority shrub-steppe habitat to the extent feasible by locating or configuring project elements in pre-existing disturbed areas.
- Minimize project impacts to the extent feasible by modifying facility layouts and/or altering construction timing.''

''Compensatory mitigation measures for the loss of shrub-steppe habitat shall be identified and implemented in the supplemental NEPA analysis and Mitigation Action Plan.''

Response: DOE believes that the following approach satisfies the substance of these comments.

The EIS (Section 5.20) describes both mitigation measures that are integral parts of all of the alternatives (Section 5.20.1) and further mitigation measures that could be implemented when indicated or appropriate (Section 5.20.2). In selecting the preferred alternative DOE has committed to all of the mitigation measures in Section 5.20.1, which include measures to restore newly disturbed areas. As the State requested, the Record of Decision commits to conducting NEPA analysis for site selection of facilities.

DOE intends to implement those further measures described in Section 5.20.2 as may be necessary to mitigate potential impacts on priority shrub-steppe habitat, and will consider the potential for such impacts as a factor in the site selection process for TWRS facilities. The site selection process will include the following hierarchy of measures: (1) avoid undisturbed shrub-steppe areas to the extent feasible; (2) minimize impacts to the extent feasible; (3) restore temporarily disturbed areas; (4) compensate for unavoidable impacts by replacing habitat; and (5) manage critical habitat on a Sitewide basis.

DOE believes that mitigation of impacts to habitats of special importance to the ecological health of the region is most effective when planned and implemented on a sitewide basis. Recognizing this, DOE is preparing a sitewide biological management plan to protect these resources. Under this sitewide approach, the potential impacts of all projects would be evaluated and appropriate mitigation would be developed based on the cumulative impacts to the ecosystem. Mitigation to reduce the ecological impacts from TWRS remediation would be performed in compliance with the sitewide biological management plan. Mitigation would focus on disturbance of contiguous, mature sagebrush-dominated shrub-steppe habitat. Compensation (habitat replacement) would occur where DOE deems appropriate. Specific mitigation ratios, sites, and planting strategies (e.g., plant size, number, and density) for TWRS facilities and operations would be defined in the TWRS Mitigation Action Plan, which would be revised for each specific TWRS facility siting decision. The Mitigation Action Plan would be prepared in consultation with the Washington State Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and Tribal Nations, with input from the Hanford Site's Natural Resources Trustees Council. DOE will make the Mitigation Action Plan publicly available before taking action that is the subject of a mitigation commitment.

[FR Doc. 97–4696 Filed 2–25–97; 8:45 am]
BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed three year clearance with no changes to the forms EIA–800–804, 807, 810–814, 816, 817, 819M, and 820 of EIA's Petroleum Supply Reporting System.

DATES: Written comments must be submitted on or before April 28, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Michael Conner, Energy Information Administration, EI–421, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–1795, e-mail mconner@eia.doe.gov, and FAX (202) 586–5846.

FOR FURTHER INFORMATION: Requests for additional information or copies of the form and instructions should be directed to Michael Conner at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, Title 44, U.S.C. Chapter 35).

The Petroleum Supply Reporting System collects data necessary for determining the supply and disposition of crude oil, finished petroleum products, and natural gas liquids. These data are published by the Energy Information Administration in the Weekly Petroleum Status Report, Petroleum Supply Monthly, and the Petroleum Supply Annual. Respondents to the surveys are producers of oxygenates, operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tanker and barge operators, and oil importers.

II. Current Actions

The Energy Information Administration will request a three year clearance with no changes to the existing collection forms.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. (If the notice covers more than one form, add ''Please indicate to which form(s) your comments apply.'')

General Issues

A. Is the proposed collection of information necessary, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects in a useful and timely fashion.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. EIA allows for respondents to report manually or by using the Petroleum Electronic Data Reporting Option (PEDRO) for all forms except the EIA–807, EIA–819M, and EIA–820. EIA believes that reporting using PEDRO takes less time than manual reporting. Estimated public reporting burden for the collections are listed below. For those forms that utilize PEDRO, two estimates are provided: the first is for an average report prepared manually and the second is for an average report submitted using PEDRO. The burden estimates are: EIA–800, 1 hour 15 minutes (manual submission) and 1 hour (PEDRO submission); EIA–801, 45 minutes and 30 minutes; EIA–802, 45 minutes and 30 minutes; EIA–803, 30 minutes and 15 minutes; EIA–804, 1 hour 15 minutes and 1 hour; EIA–807, 1 hour for weekly reports from October through March, and 30 minutes for monthly reports from April through September; EIA–810, 3 hours 45 minutes and 2 hours; EIA–811, 1 hour 45 minutes and 1 hour; EIA–812, 2 hours 15 minutes and 1 hour 30 minutes; EIA–813, 1 hour 30 minutes and 45 minutes; EIA–814, 2 hours and 1 hour 15 minutes; EIA–816, 45 minutes and 30 minutes; EIA–817, 1 hour 45 minutes and 1 hour; EIA–819M, 30 minutes; and EIA–820, 2 hours. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

D. What are the estimated (1) total dollar amount annualized for capital and start-up costs, and (2) recurring annual dollar amount of operation, maintenance, and purchase of service costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information. Estimates should not include purchases of equipment or services made as part of customary and usual business practices, or the cost of any burden hours for completing the form. EIA estimates that there are no additional costs other than those that the respondent incurs in keeping the information for its own uses.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C. February 20, 1997.

Lynda T. Carlson,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 97–4694 Filed 2–25–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–246–000]

ANR Pipeline Company; Notice of Application

February 20, 1997.

Take notice that on February 14, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to Sections 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for authorization to utilize temporary work spaces and for any other authorization deemed necessary associated with a pipeline replacement project in Kendall County, Illinois, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states, that in order to satisfy U.S. Department of Transportation safety regulations, it proposes to replace both a 0.27 mile and 0.29 mile line segment of its main line system due to increased population density in the area. ANR states that in order to make the replacement it will have to utilize work areas which may not have been included in the scope of the original authorization to construct the facilities. Therefore, ANR requests the temporary use of work space and any other authorizations deemed necessary by the Commission in order to make the replacement. ANR states that the construction will be done under the authority of Section 2.55 of the Commission's Regulations, which authorizes replacement within the existing right-of-way.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 13, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in any subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4673 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1170–000]

Bangor Hydro Electric Company; Notice of Filing

February 20, 1997.

Take notice that on December 31, 1996, Bangor Hydro Electric Company tendered for filing a Pro Forma Open Access Transmission Tariff. Bangor Hydro states that this submittal is to remove higher voltage network facilities from its tariff.

Any Person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 27, 1997. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–4721 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–018]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

February 20, 1997.

Take notice that on February 14, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on February 1, 1997.

On December 31, 1996, as revised on January 17, 1997, Columbia filed revised tariff sheets in Docket No. RP95–408, et al. that, inter alia, would implement lower settlement rates pending Commission action on the November 22, 1996 settlement in this docket, contingent upon customers being subject to a surcharge in the event the settlement is not approved or implemented. The Federal Energy Regulatory Commission (Commission) issued its order on Columbia's filings on January 29, 1997 (78 FERC ¶ 61,071), which accepted the revised tariff sheets but which required that Columbia file revised tariff sheets setting forth the existing rates which any customer that does not agree to the surcharge provision may pay until the settlement is acted upon by the Commission.

Columbia states that the instant filing is being made in compliance with that order. The revised tariff sheets herein indicate they are ''Collection Rates'' and contain a statement that they are applicable to customers not wanting to be subject to the surcharge condition associated with paying the Settlement Rates. These tariff sheets reflect the rates that were in effect in the billing month preceding February 1, 1997.

Columbia states that copies of its filing have been mailed to all parties in this proceeding, firm and interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4676 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–252–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 20, 1997.

Take notice that on February 14, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume 1, the following revised tariff sheet, to be effective on March 1, 1997:

Tenth Revised Sheet No. 4

East Tennessee is filing the proposed tariff sheet pursuant to its Rate Schedule LMS–MA, which requires East Tennessee to reflect its Daily Demand Service (DDS) rate changes in the DDS rates of its upstream transporter, Tennessee Gas Pipeline Company (Tennessee).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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 available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4679 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–341–003 and CP94–327–005]

Koch Gateway Pipeline Company; Notice of Compliance Filing

February 20, 1997.

Take notice that on February 18, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing the following revised tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective October 1, 1996:

2nd Substitute Original Sheet No. 719

Koch states that this tariff sheet is filed to comply with the Federal Energy Regulatory Commission's (Commission) ''Order Accepting Tariff Filing Subject to Conditions'' issued February 3, 1997 in Docket Nos. RP96–341 and CP94–327.

Koch states that a copy of this filing is being served upon all parties on the official service list created by the Secretary in this proceeding.

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 Section 385.211 of the Commission's regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4678 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–253–000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

February 20, 1997.

Take notice that on February 14, 1997, Northern Border Pipeline Company (Northern Border) petitioned the Federal Energy Regulatory Commission (Commission) for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to allow Northern Border to waive an imbalance penalty incurred by two of its shippers.

Any Person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission Rules of Practice and Procedure. All such motions or protest must be filed on or before February 27, 1997. Protests will be considered by it 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.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–4680 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–51–004]

Panhandle Eastern Pipe Line Company; Notice of Filing

February 20, 1997.

Take notice that on February 14, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its compliance filing to report the operating experience under Rate Schedule GPS (Gas Parking Service) for the twelve months ended December 31, 1996 in compliance with Ordering Paragraph (D) of the Commission's Order dated June 4, 1996 in Docket No. RP96–51–000, 75 FERC ¶ 61,255 (1996).

Panhandle states that copies of this filing are being served on all parties to the proceedings in Docket No. RP96–51–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 27, 1997. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–4677 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–241–000]

Transcontinental Gas Pipe Line Company; Notice of Request Under Blanket Authorization

February 20, 1997.

Take notice that on February 11, 1997, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP97–241–000 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, own, and operate a new sales tap, located in Delaware County, Pennsylvania, to Tosco Refining Company (Tosco), a refiner of crude oil products, under Transco's blanket certificate issued in Docket No. CP82–426–000, pursuant to Section 7(c) 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.

Transco proposes to construct, own, and operate a sales tap to Tosco consisting of a 6-inch valve assembly, a meter station with two 6-inch meter runs, and other appurtenant facilities, located in Delaware County, Pennsylvania. Transco states Tosco will construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco at such point and move the gas to Tosco's refinery facilities.

Transco asserts the new sales will be used by Tosco to receive up to 24,000 Mcf of gas per day from Transco on a capacity release, secondary firm or interruptible basis. Transco declares upon completion of the sales tap, they will commence transportation service to Tosco or its suppliers pursuant to Transco's Rate Schedules FT, FT–R, or IT and Part 284(G) of the Commission's Regulations. Transco states the addition of the sales tap will have no significant impact on their peak day or annual deliveries, and is not prohibited by Transco's FERC Gas Tariff.

Transco states the estimated total cost of their proposed facilities to be approximately $375,000, which Tosco will reimburse Transco for all costs associated with such facilities.

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 Section 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4672 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–236–0073]

Williston Basin Interstate Pipeline Company; Notice of Interim Refund

February 20, 1997.

Take notice that on November 1, 1996, Williston Basin Interstate Pipeline Company (Williston Basin) filed its Report of the Interim refund and the amount of the refund broken out to show principal and interest.

Williston Basin states that the total refund amount distributed to customers is $6,038,687.05.

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 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 27, 1997. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4675 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–000–NC]

North Carolina Power; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969

February 20, 1997.

Virginia Electric and Power Company operating in Virginia as Virginia Power and in North Carolina as North Carolina Power (NCP) is the licensee for the Roanoke Rapids and Gaston Project, FERC No. 2009. The license for the project expires on January 31, 2001.

On May 23, 1995, NCP held the first stage consultation meeting for the project. The purpose of the meeting was to identify resource issues to be addressed during the relicensing process. Studies were initiated in January 1996 and are currently ongoing.

During 1996, NCP determined that an Applicant Prepared Environmental Assessment (APEA) would facilitate the relicensing process, which was generally supported by the resource agencies and interested parties. Federal Energy Regulatory Commission (FERC) approval to conduct the APEA process was granted on December 13, 1996. As part of the APEA process, NCP has prepared a Scoping Document I (SDI), which provides information on the scoping process, APEA schedule, background information, environmental issues, and proposed project alternatives. The issues contained in SDI are based on agency and public comments at the May 23, 1995, and other meetings.

The purpose of this notice is to: (1) advise all parties as to the proposed scope of the environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the APEA document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The document, SDI, will be circulated to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, nongovernmental organizations (NGO's), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues.

Scoping Meetings

NCP and FERC staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist in

identifying the scope of environmental issues that should be analyzed in the APEA NEPA document.

The public scoping meeting will be held on March 13, 1997, from 7:00 p.m. to 11:00 p.m. at the Kirkwood F. Adams Community Center, 1100 Hamilton St. Roanoke Raids, NC.

The agency scoping meeting will be held on March 13, 1997, from 9:00 a.m. to 5:00 p.m., at the offices of North Carolina Power, 1040 Roanoke Avenue, Roanoke Rapids, NC. For more details, interested parties should contact Ken Baker, (804) 273–3257, prior to the meeting date.

Objectives

At the scoping meetings, the NCP and FERC staff will: (1) summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed.

Meeting Procedures

The meetings will be recorded by a stenographer and become a part of the formal record of the Commission proceeding on the Roanoke Raids Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least 5 minutes to present their views.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the project to any member of the Commission staff outside of the established process for developing the record as stated in the record of the proceeding.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than April 14, 1997.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commenters *may* submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Roanoke Rapids Project, FERC No. 2009.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

Based on all written comments and a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the APEA scoping process, please contact Ed Crouse, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, NE, Washington, DC, 20426 at (202) 219–2794.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–4674 Filed 2–25–97; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Proposal To Extend Electric Power Resource Commitments to Contractors of the Salt Lake City Area Integrated Projects by Application of the Energy Planning and Management Program Power Marketing Initiative

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposal.

SUMMARY: In 1995, the Department of Energy, Western Area Power Administration (Western) completed an environmental impact statement (EIS), DOE/EIS–0182, on its Energy Planning and Management Program (Program). Western published a Final Rule adopting the Program on October 20, 1995 (10 CFR Part 905). The Program has two major components: a requirement that all long-term, firm electrical power contractors prepare integrated resource plans (IRP) or small customer plans; and a Power Marketing Initiative (PMI) in which these contractors will receive an extension of a major portion of the resources available at the time the contracts expire. The Record of Decision (ROD) stated that Western would implement the requirements for customers to prepare IRPs and small customer plans immediately, but that application of the PMI would be done on a project-specific basis. Western now proposes to apply the PMI to the long-term, firm power contracts of the Salt Lake City Area Integrated Projects (SLCA/IP).

DATES: Western will accept written comments on or before May 27, 1997. The times and locations of four information/comment meetings will be announced in a subsequent notice in the Federal Register.

ADDRESSES: Comments may be submitted to: Mr. David Sabo, Western Area Power Administration, Colorado River Storage Project Manager, P.O. Box 11606, Salt Lake City, UT 84147–0606.

SUPPLEMENTARY INFORMATION: Western first proposed the Program on April 19, 1991 (56 FR 16093). The goals of the Program were to encourage efficient energy use by Western's long-term, firm power customers by requiring integrated resource planning and to extend Western's firm power resource commitments as contracts expire. Western published its notice of intent to prepare an EIS on the Program in the Federal Register on May 1, 1991 (56 FR 19995).

President Bush signed the Energy Policy Act (EPAct) into law on October 24, 1992. Section 114 of EPAct amended Title II of the Hoover Power Plant Act of 1984 to require the preparation of IRPs by Western's customers. Western adjusted its proposed Program to fully incorporate the provisions of this law.

A notice of proposed rulemaking for the Program was published in the Federal Register on August 9, 1994 (59 FR 40543), with seven public information/comment forums held at various locations during September 1994. In the August 9 Notice, Western estimated that initially 98 percent of SLCA/IP resources available at the end of the term of existing contracts would be extended.

In the Final rule, Western stated that application of the PMI including length of resource extension and the amount of resources extended would be determined through a project specific process later.

Under the PMI, existing firm power sales commitments were to be extended for 20 years beyond the existing termination date. A commitment of not less than 96 percent of the hydroelectric power resource determined to be available to the customers was to be extended, and a power resource pool of up to 4 percent of the power from these customers would be created.

The resource pool would be used for allocations to new customers and contingencies. The rule stated that a more precise decision on how resource pools would be used would be made by Western later. Western's rule further stated that the percentage of existing commitments extended for the other projects would be determined later. It also stated that the application of the PMI for the ''Salt Lake City Area Integrated Projects Marketing Plan would be determined following completion of the separate National Environmental Policy Act of 1969 (NEPA) process currently under way.'' That NEPA process is the SLCA/IP Electric Power Marketing EIS. The final EIS was published in January 1996, and the ROD was published in October 1996.

Western proposes to apply the PMI, (10 C.F.R. 905.31 through 905.37), to the SLCA/IP. This includes, among other things, a proposal to extend 96 percent of the SLCA/IP contractors' entitlement of long-term, firm Federal resources as of September 30, 2004, for an additional 20 years. Western proposes that an initial resource pool of up to 4 percent of available Federal resources be created for new customers to encourage customer development of new technologies for conservation or renewable resources and for contingencies. Western's analysis shows that a resource pool of 4 percent of available resources should be adequate to provide potential new customers with a fair share entitlement of Federal resources. Fair share amounts of capacity and energy will be offered to new customers meeting the requirements established in the Post-89 Marketing Criteria and to qualifying Indian tribes within the SLCA/IP marketing area. Indian tribes need not have utility status to qualify for an allocation. In addition to the adjustment in long-term firm resources in 2004, resource commitments may be reduced on October 1, 2009, and October 1, 2014, upon 2 years written notification. These resource adjustments would provide an additional amount of power for the same purposes as the 2004 adjustment.

Adjustments may also be made in resource allocations at any time to reflect changes in dam operations and/or water conditions upon 5 years notification.

Western is seeking comments on the appropriateness of the length of extension offered and on what percentage of the SLCA/IP resource should be extended to the SLCA/IP long-term, firm power customers. In addition Western requests comments on the uses that should be made of the electrical power resource pool that will be created. Following the public comment period, Western will analyze the comments received and publish its policy regarding extension of resource commitments in the Federal Register.

NEPA COMPLIANCE: Western will comply with NEPA through preparation of appropriate NEPA documentation of the impacts of the proposal.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget (OMB) is required.

Issued in Washington, DC on February 19, 1997.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 97–4693 Filed 2–25–97; 8:45 am]

BILLING CODE 6450–01–P

Proposed 2004 Power Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed plan.

SUMMARY: The Western Area Power Administration's (Western) Sierra Nevada Customer Service Region (Sierra Nevada Region) has developed a Proposed 2004 Power Marketing Plan (Proposed Plan). The Proposed Plan provides for marketing power from Central Valley Project (CVP) and Washoe Project powerplants after the year 2004. Western currently markets about 1,580 megawatts (MW) of CVP power under long-term contracts to 80 preference customers in northern and central California. Western also markets 3.65 MW of Washoe Project power. On December 31, 2004, all of Western's long-term CVP power sales contracts will expire, along with Contract 14–06–200–2948A (Contract 2948A) with the Pacific Gas and Electric Company (PG&E) for the sale, interchange and transmission of electric capacity and energy. Western has developed the Proposed Plan to define the products and services to be offered, and the eligibility and allocation criteria that will lead to allocations of CVP and Washoe Project power beyond the year 2004. This Federal Register notice initiates the Administrative Procedure Act process that gives the public an opportunity to participate in administrative rulemaking for marketing of this power by Western after the year 2004, and requests public comment.

DATES: On April 8, 1997, beginning at 10 a.m., Western will hold a public information forum on the Proposed Plan. At the information forum, Western representatives will present the Proposed Plan and respond to questions from the public. On April 24, 1997, beginning at 1 p.m., Western will hold a public comment forum to receive oral and written comments on the Proposed Plan. Each forum will be held at the Sierra Nevada Regional Office, 114 Parkshore Drive, Folsom, California. Oral or written comments may be presented at the public comment forum. A transcript of oral comments made at this forum will be available from the court reporter. Written comments on the Proposed Plan will be accepted from the date of publication of this Federal Register notice through May 27, 1997.

ADDRESSES: Written comments may be hand-delivered, mailed, or faxed to the address provided below. Comments must be received by 5 p.m. PDT or postmarked on May 27, 1997 to assure consideration. Inquiries and written comments regarding the Proposed Plan should be directed to: James C. Feider, Regional Manager, Western Area Power Administration, Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4418, (916) 985–1931 FAX.

All documentation developed or retained by Western for the purpose of developing the Proposed Plan will be available for inspection and copying at the address below.

FOR FURTHER INFORMATION CONTACT: Zola M. Jackson, Power Marketing Manager, Western Area Power Administration, Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4421.

After all public comments have been considered, Western will publish a Final 2004 Power Marketing Plan (Final Plan) in the Federal Register.

SUPPLEMENTARY INFORMATION:

Authorities

The Sierra Nevada Region developed this Proposed Plan in accordance with its power marketing authorities in the Federal Reclamation laws, the Act of June 17, 1902 (32 Stat. 388), the Act of August 4, 1939 (53 Stat. 1187); the Act of April 8, 1935 (49 Stat. 115), the Act of June 22, 1936 (49 Stat. 1622), the Act of August 26, 1937 (50 Stat. 844), the Act of October 17, 1940 (54 Stat. 1198), the Act of December 22, 1944 (58 Stat. 887), Act of October 14, 1949 (63 Stat. 852), the Act of September 26, 1950 (64 Stat. 1036), the Act of August 12, 1955 (69 Stat. 719), the Act of August 1, 1956 (70 Stat. 775), the Act of June 3, 1960 (74 Stat. 156), the Act of October 23, 1962 (76 Stat. 1173), the Act of September 2, 1965 (79 Stat. 615), the Act of August 4, 1977 (91 Stat. 565), and the Act of July 16, 1984, including all acts amendatory and/or supplementary to the above listed.

Development of the Proposed Plan

Western is developing the Proposed Plan to define: (1) the products and services to be offered, and (2) the criteria for allocating power resources to be marketed under contracts that will replace those expiring on December 31, 2004.

Development of the Proposed Plan was initiated with a series of three informal public information meetings held on November 17, 1995, March 7, 1996, and May 13, 1996. These meetings began informal discussions to identify pertinent issues and possible marketing options, including products and services and eligibility and allocation criteria, to be included in the Proposed Plan. During the informal process, Western evaluated several options for marketing power after termination of existing contracts. Western's proposal provides each customer a right to customize its power allocation from Western. This will provide a customer the flexibility to optimize the use of Western power.

Western is also proposing to offer a resource extension to existing customers and to offer a portion of the resource to new customers. Western believes its Proposed Plan provides a balance between existing and new customers, while meeting its contractual obligations that continue beyond 2004.

As explained in the DATES section of this notice, Western will hold public information and comment forums on the Proposed Plan. After consideration of all public comments, Western will publish notice of the Final Plan in the Federal Register. With that notice, Western will also announce its decisions regarding power resource extensions to existing customers and call for applications for new allocations. The deadline for receipt of applications will be set forth in the call for applications. Western will then consider the applications, determine which applications meet the requirements of the Final Plan, and exercise its discretion provided by law in allocating the power to eligible applicants. Proposed and final allocations will subsequently be published in the Federal Register.

To implement the Proposed Plan, the level of power resources to be marketed must be determined. Determining levels of power resources to be marketed and subsequently entering into contracts for the delivery of related products and services could be a major Federal action with potentially significant impacts on the human environment. Therefore, an Environmental Impact Statement (EIS) process was initiated on the 2004 Power Marketing Program with a Federal Register notice published at 58 FR 42536 and 43105, on August 10 and 13, 1993, respectively, in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.), as amended, and associated implementing regulations. Following several public meetings, a draft EIS was prepared. The draft EIS described the environmental consequences of a range of reasonable marketing plan alternatives and identified no significant impacts. A Federal Register notice was published on May 24, 1996 (61 FR 26174) announcing that the draft EIS was available for public review and comment. Also, Western held a public hearing on June 13, 1996 to receive formal comments on the draft EIS, with a July 31, 1996 deadline for receipt of written comments. A final EIS is expected to be completed by March 1997, and a Record of Decision is tentatively scheduled to be published in April 1997. The Final Plan will incorporate decisions made as a result of the findings of the final EIS.

The schedule for the Proposed Plan was developed to recognize Western's responsibility to its customers to provide: (1) necessary planning time (approximately 5 years after final contract commitments) for customers to acquire new power resources should their allocation of CVP power change; (2) sufficient time for Western's Sierra Nevada Region or its customers to negotiate contracts for control area services, third-party transmission, and supplemental power supplies; and (3) time to meet with each customer to design a product/service package prior to the customer making a final commitment.

The Proposed Plan also incorporates the intent of the Final Rule for the Energy Planning and Management Program (EPAMP) (10 CFR part 905), published by Western on October 20, 1995 at 60 FR 54151. The EPAMP Final Rule became effective on November 20, 1995. EPAMP implements Section 114 of the Energy Policy Act of 1992, and requires Western's customers to prepare Integrated Resource Plans (IRP). The Power Marketing Initiative (PMI) of EPAMP provides a framework for extending a major portion of the power available at the time current contracts expire to existing customers, and for establishing project-specific resource pools. During the public process for EPAMP, it was determined that application of the PMI to the CVP would be evaluated during the 2004 Power Marketing Plan public process.

Background

The CVP is a large water and power system, initially authorized by Congress in 1935, which covers approximately one-third of the State of California. Legislatively defined purposes set the priorities for the CVP as: (1) river regulation; (2) improvement of navigation; (3) flood control; (4) irrigation; (5) domestic uses; and (6) power. In addition, the CVP Improvement Act of 1992 added fish and wildlife habitat as a priority to the list of CVP purposes.

The CVP power facilities include 11 powerplants with a maximum operating capability of about 2,044 MW, and an estimated average annual generation of 4.6 million megawatthours (MWh). The U.S. Department of the Interior, Bureau of Reclamation (Reclamation) operates the water control and delivery system and all of the powerplants with the exception of the San Luis Unit, which is operated by the State of California for Reclamation. Western markets and transmits the power available from the CVP.

Western owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral section of the Pacific Northwest-Pacific Southwest Intertie (Pacific Intertie)), 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line and 44 miles of 69-kV and below transmission line. Western also has part ownership in the 342-mile California-Oregon Transmission Project (COTP). Some of Western's existing customers have no direct access to Western's transmission lines and receive service over transmission lines owned by other utilities.

Western has historically combined output from CVP hydroelectric facilities with supplemental power from a number of other power resources. This has enabled Western to enhance the CVP power resources and to market an amount of firm power to its customers that would not be available solely from CVP facilities in all years. A portion of this supplemental power has been transmitted over the COTP and Pacific Intertie.

The Washoe Project was authorized by Congress in 1956 and is a separate project from the CVP. The Washoe Project, located in west-central Nevada and east-central California, was designed to regulate runoff from the Truckee and Carson rivers and to enhance irrigation; water drainage; municipal, industrial, and fisheries uses; and provide flood protection; fish and wildlife habitat; and recreation. The Washoe Project includes Prosser Creek Dam and reservoir; Stampede Dam, reservoir, and powerplant; Marble Creek Dam; and Pyramid Lake Fishway. The Stampede Powerplant, located in Sierra County, California, was completed in 1987, and has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh. Sierra Pacific Power Company (SPPC) owns and operates the only transmission system available for distribution of power generated at the Stampede Powerplant.

History of Central Valley Project Power Allocations

Power was first generated in the CVP at the Shasta Powerplant in 1944. Formal allocations of 450 MW of CVP power were first made in 1952. In 1964, with the addition of the Trinity River Division facilities, allocations to preference customers were increased to 925 MW. In 1967, under terms of Contract 2948A, power imports over the Pacific Intertie (Northwest imports) were incorporated along with provisions for load level increases up to 985 MW in 1975 and up to 1,050 MW in 1980.

Later in 1980, the load level was increased by 102 MW to 1,152 MW. This increase in allocations was accomplished under the 1981 Power Marketing Plan (47 FR 4139) dated January 28, 1982. New customers received 26 MW of nonwithdrawable power and 42 MW of withdrawable power for a total of 68 MW, with 4 MW of withdrawable power left unallocated. Also, diversity power allocations of 30 MW were made to those customers who could shed load during Sierra Nevada Region's system simultaneous peak.

During the same time period, SMUD challenged Western's right to meld the costs of Northwest imports into CVP power rates charged to SMUD. In a 1983 settlement, it was agreed that SMUD would pay the melded CVP power rates; SMUD's electric service contract, due to expire in 1994, would be extended to 2004; and SMUD would have the right to purchase 100 MW of peaking capacity through 2004. Further, SMUD would have the right to purchase a portion of the power to be marketed from 2005 to 2014.

Under the 1994 Power Marketing Plan (57 FR 45782 and 58 FR 34579) dated October 5, 1992 and June 28, 1993, respectively, existing customers with contracts expiring in 1994 were allocated 501 MW, and approximately 8 MW was allocated to new customers.

In addition to the power marketed in the 1994 Power Marketing Plan, total power under existing contracts includes approximately 910 MW of long-term firm power, 100 MW of peaking capacity, and 60 MW of withdrawable power, for a total of about 1,580 MW. See Appendix A of this notice for Existing Customers' CRD Amounts.

On November 30, 1993, the National Defense Authorization Act (NDA Act) was signed into law. This act provides that, for a 10-year period, the CVP electric power allocations to military installations in the State of California which have been closed or approved for closure shall be reserved for sale through long-term contracts to preference entities which agree to use such power to promote economic development at the military installations closed or approved for closure. On December 1, 1994, Western published the final NDA Act procedures developed to fulfill the requirements of section 2929 of the NDA Act (59 FR 61604). To date, about 42 MW of long-term firm power and about 9 MW of withdrawable power under contract to military installations being closed has been converted to NDA Act power.

History of Washoe Project (Stampede Powerplant) Allocations

Pursuant to Final Allocation of Stampede Powerplant Power (50 FR 43456) dated October 25, 1985, Western allocated all the energy generated at Stampede Powerplant in excess of that needed to serve project use (Lahontan Fish Hatchery and Marble Bluff Fish Facility) to Truckee-Donner Public Utility District. Because Truckee-Donner was unable to obtain transmission service, it was unable to enter into a contract with Western to receive Stampede energy. In 1988, Western rescinded the allocation of Stampede energy to Truckee-Donner and marketed Stampede energy to SPPC under short-term agreements.

In 1990, Western began conducting a bidding process for the sale of Stampede energy, giving priority to preference entities. Since no preference entity met the bidding criteria, SPPC continued to purchase Stampede energy under short-term agreements.

In April 1994, Western executed agreements with SPPC and the Fish and Wildlife Service (F&WS) which established a mechanism to provide project use service to the F&WS facilities. These agreements also provide Western the option to market and transmit all energy, in excess of that which is required to provide project use service, outside of SPPC's control area.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.), each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that (1) this rulemaking relates to services offered by Western and therefore is not a rule within the purview of the Act, and (2) an allocation of power from Western would not cause an adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this Federal Register notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Environmental Compliance

In compliance with NEPA (42 U.S.C. 4321, et seq.), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–1508), and DOE NEPA implementing regulations (10 CFR part 1021), Western completed an environmental impact statement on EPAMP. The Record of Decision was published in the Federal Register on October 12, 1995 (60 FR 53181). Additionally, as described in the Supplementary Information Section of this notice, Western and the Environmental Protection Agency announced the availability of Western's draft EIS on the 2004 Power Marketing Program in Federal Register notices published on May 24, 1996 (61 FR

26174 and 26178, respectively). The draft EIS described the environmental consequences of a range of reasonable marketing plan alternatives and identified no significant impacts. The Proposed Plan falls within the range of alternatives considered. This NEPA review will assure all environmental effects related to Western's Proposed Plan have been identified and analyzed.

CVP and Washoe electrical capacity and energy to be marketed is influenced by available reservoir storage and water releases controlled by Reclamation within the CVP in California. Pursuant to Title 34 of Public Law 102–575, the CVP Improvement Act of 1992, Reclamation is preparing a Programmatic Environmental Impact Statement (PEIS) addressing improvements to fish and wildlife habitat stipulated in Public Law 102–575, and potential changes in CVP operations and water allocations to meet those obligations. The draft PEIS may result in modifications to CVP facilities and operations that would affect the timing and quantity of electric power generated by the CVP. Such changes may, in turn, affect electric power products and services to be marketed by Western. This Proposed Plan is designed to accommodate these changes. Western is a cooperating agency in Reclamation's PEIS.

Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule, under control number 1910–1200.

Determination Under Executive Order 12866

DOE has determined that the Proposed Plan is not a significant regulatory action because it does not meet the criteria of Executive Order 12866 (58 FR 51735). Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Proposed 2004 Power Marketing Plan

This Proposed Plan addresses: (1) the power to be marketed after 2004; (2) the terms and conditions under which the power will be marketed; and (3) the criteria to determine who will receive an allocation.

Within broad statutory guidelines and operational constraints of the CVP, Western has wide discretion as to whom and on what terms it will contract for the sale of Federal power as long as preference is accorded to statutorily defined public bodies. Power must be sold in such a manner as will encourage the most widespread use at the lowest possible rates consistent with sound business principles.

I. Acronyms and Definitions

As used herein, the following acronyms and terms, whether singular or plural, shall have the following meanings:

Administrator: The Administrator of Western Area Power Administration.

Allocation: An offer to an entity to purchase power from Western.

Allocation Criteria: Conditions applied to all applicants seeking an allocation.

Allottee: A preference entity receiving an allocation or power resource extension.

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with good utility practice. Ancillary services are generally described in Federal Energy Regulatory Commission Order No. 888, Docket Nos. RM95–8–000 and RM94–7–001, issued April 24, 1996.

Base Resource: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004 determined by Western to be available for marketing, exclusive of project use and First Preference entitlements.

Capacity: The electrical capability of a generator, transformer, transmission circuit or other equipment.

Central Valley Project (CVP): A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of the City of Bakersfield.

Contract Principles: Provisions made part of the electric service contracts which include the General Power Contract Provisions.

Contract Rate of Delivery (CRD): The maximum amount of capacity made available to a preference customer for a period specified under a contract.

Curtailable Power: Power which may be curtailed on a real-time scheduling basis at Western's sole discretion under certain conditions.

Custom Product: A combination of products and services, excluding provisions for load growth, made available by Western per customer request, utilizing the customer's Base Resource and supplemental purchases made by Western at customer expense.

Customer: An entity with a contract and receiving electric service from Western's Sierra Nevada Region.

Diversity Power: Power made available because of the diversity of customers' peak demands at the time of Sierra Nevada Region's peak demand.

Eligibility Criteria: Conditions that must be met to qualify for an allocation.

Energy: Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in megawatthours.

Energy Planning and Management Program (EPAMP): Western-wide program developed to encourage customer energy planning (60 FR 54151, dated October 20, 1995).

Existing Customer: A preference customer with a contract to purchase firm power, offered under a previous allocation process or marketing plan, that extends through December 31, 2004.

Extension CRD: Existing customer's CRD exclusive of Diversity and Curtailable Power, peaking/excess capacity, and NDA Act Power not used for military loads.

Final Plan: Western's Final 2004 Power Marketing Plan.

Firm: A type of product and/or service that is available to a customer at the times it is required.

First Preference Customer/Entity: A preference customer and/or a preference entity (an entity qualified to use, but not using preference power) within a county of origin (Trinity, Calaveras and Tuolumne) as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones Act of the Flood Control Act of 1962 (76 Stat. 1180).

General Power Contract Provisions (GPCP): Standard terms and conditions which are included in electric service contracts.

Integrated Resource Plan (IRP): A process and framework within which the costs and benefits of both demand and supply-side resources are evaluated to develop the least total cost mix of utility resource options.

Kilowatt (kW): The electrical unit of capacity that equals one thousand watts.

Load Factor: The ratio of the average load in kW supplied during a designated period to the peak or maximum load in kW occurring in that period.

Long-Term: A designation for a contractual period of time greater than 5 years.

Marketing Area: The area which generally encompasses northern and central California extending from the Cascade Range to the Tehachapi Mountains and west-central Nevada.

Megawatt (MW): The unit by which the rate of production of electricity is

often measured; one megawatt equals one million watts.

NDA Act: Section 2929 of the National Defense Authorization Act, Public Law 103–160, 107 Stat. 1547, 1935 (1993), which provides that, for a 10-year period, the CVP electric power allocations to military installations in the State of California which have been closed or approved for closure shall be reserved for sale through long-term contracts to preference entities which agree to use such power to promote economic development at the military installations closed or approved for closure.

NDA Act Power: Power allocated in accordance with the NDA Act Procedures (59 FR 61604, dated December 1, 1994), which provide for NDA Act power allocations.

Peaking: The operation of electric powerplants for brief periods when demand for electricity is greatest.

Power: Capacity and energy.

Power Marketing Initiative (PMI): A component of Western's EPAMP providing criteria regarding certain Western power marketing programs.

Preference: The requirements of Reclamation law which provide that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Project Use: Power as defined by Reclamation law and/or used to operate CVP and Washoe Project facilities.

Proposed Plan: Western's Proposed 2004 Power Marketing Plan.

Reclamation law: Refers to a series of Federal laws with a lineage dating back to the turn of the century. Viewed as a whole, these laws create the framework under which Western markets power.

Sierra Nevada Region: The Sierra Nevada Customer Service Region of Western Area Power Administration.

Unbundled: Electric service that is separated into its components and offered for sale with separate rates for each component.

Washoe Project: A Federal water project located in the Lahontan Basin in west-central Nevada and east-central California.

Western: Western Area Power Administration, United States Department of Energy, a Federal power marketing administration responsible for marketing the surplus generation from Federal hydroelectric multipurpose projects pursuant to Reclamation law and the DOE Organization Act (91 Stat. 565, 42 U.S.C. 7101, et seq.).

Withdrawable: Power that may be withdrawn under certain conditions.

II. Marketable Power Resource

The primary purpose of the CVP and Washoe Project is water control and delivery. The water control system consists of storage reservoirs that provide daily, seasonal, and annual flow regulation, and smaller regulating reservoirs for diverting water and smoothing upstream dam and powerplant releases. Power generated from these resources depends on hydrology and water operation requirements. Some of the power generated is used for project use to operate pumping and fishery facilities. Currently, project use power is metered at 181 locations in northern and central California and Nevada.

Expected CVP generation (energy and capacity) for 2005 and beyond will vary annually, monthly, and daily, based on hydrology and other constraints that govern CVP operations. CVP generation is available at generator bus and must be adjusted for project use, maintenance, reserves, transformation losses, and certain ancillary services before a Base Resource is available for marketing. Transmission losses will be pursuant to the terms of a transmission service agreement. The power resources will also be adjusted for First Preference customers as described in this Proposed Plan.

The following Table provides estimates of CVP power resources and adjustments before any power resources are available to customers beyond 2004:

TABLE A.—ESTIMATED CVP POWER RESOURCES AND ADJUSTMENTS

Power resources/adjustment	Range/value
Annual energy generation	2,400,000–8,600,000 MWh.
Monthly energy generation	100,000–1,100,000 MWh.
Monthly capacity	1,100–1,900 MW.
Annual project use	670,000–1,670,000 MWh.
Monthly project use	10,000–180,000 MWh.
Monthly project use (on peak)	30–230 MW.
Monthly maintenance	0–300 MW.
Reserves	5% of monthly capacity.
CVP transmission and transformation losses from the generator bus to a 230-kV load bus	1.8% (as of 1995).

All of the power resource adjustments and variables mentioned above will influence the amount of Base Resource available to customers. During some critically dry months, purchases may be required to meet project use and only a minimal amount of Base Resource will be available during such months. The useability of the Base Resource for meeting customers'' loads will be directly related to a customer's ability to integrate this power resource into their power resource mix.

Western proposes to include any power available from existing power purchase contracts with terms extending beyond 2004 in the Base Resource. Currently, Western has a contract with Portland General Electric Company for 65 MW at a 40 percent minimum load factor that has a final termination date of October 15, 2015.

Western also proposes to market part of the 3.65 MW available from the Washoe Project with the CVP power resource on an annual basis. Energy from the Washoe Project, which is estimated to be about 10,000 MWh annually, is currently being provided to F&WS Lahontan National Fish Hatchery and Marble Bluff Fish Facility. These F&WS facilities are project use loads of the Washoe Project and have first call on the power resources from the Washoe Project. All costs associated with providing F&WS project use service are, by law, nonreimbursable, and are not included in the Washoe Project energy rates. Energy in excess of the F&WS needs will be sold under the Final Plan.

Western will continue to make every effort to provide the Washoe Project power resource to F&WS. F&WS is currently using approximately 50

percent of Washoe Project generation, and the same percentage of costs is considered nonreimbursable. Western expects that F&WS loads will increase, reducing the amount of power resource to be integrated with the CVP as well as the cost to be repaid from power revenues.

III. Products and Services

Western proposes to market its Base Resource alone or in combination with the option to purchase a Custom Product. The Custom Product will be in addition to the optional purchase described in Section IV.A.2. All costs incurred by Western in providing additional services to customers will be paid by those customers. The degree to which Western continues to purchase power will depend on customer requirements and Federal authorities. All products will be subject to operational requirements and constraints of the CVP, transmission availability, and purchase limitations.

Each allottee will be allocated a portion of the Base Resource. Following execution of a contract pursuant to the Final Plan, Western will work with each individual allottee to determine the best use of the Base Resource for that allottee. All allottees will be required to commit to the Base Resource no later than December 31, 1999.

Upon request, Western will develop a Custom Product for any allottee. A Custom Product may include use of the Base Resource as firm power, ancillary services, reserves, etc., or may include Western purchasing additional resources, including firming energy, to provide some of these services. Final commitments to a Custom Product must be made by December 31, 2001, for a period of no less than five (5) years of service. Thereafter, the Custom Product will be offered for periods of one (1) year or more.

Any unused power resource available will be marketed under terms and conditions and for periods of time determined by Western. Products and services from unused power resources may be made available on a monthly, weekly, daily, hourly, or nonfirm basis.

Western may offer unused First Preference power, subject to withdrawal on a pro-rata basis, upon six (6) months written notice.

Western proposes to establish and to manage an exchange program to allow all customers to fully and efficiently use their power allocation. Any power allocated by Western to a customer that cannot be used on a real-time basis due to that customer's load profile must first be offered under this program to other customers or Western. Western will not be obligated to exchange or to purchase any surplus power from the customers on its own behalf. If the surplus power is not exchanged with other customers or purchased by Western under this program, it may be offered to others, giving priority to preference entities.

IV. Proposed Resource Extension and Resource Pool Allocation

On December 31, 2004, Western's long-term CVP power sales contracts for 1,580,230 kilowatts (kW) will expire. This Proposed Plan addresses the eligibility for and allocation of CVP and Washoe Project power after these contracts expire. When allocating power under the Final Plan, Western proposes to apply the principles of the Power Marketing Initiative (PMI) of the Energy Planning and Management Program. In accordance with the PMI, Western proposes to set aside a portion of its available power resource for new allocations. Based on Western's evaluation of potential new loads, Western proposes to initially provide 96 percent of its available power resource to existing customers and to establish a resource pool for new allocations with the remaining 4 percent. An additional incremental resource pool of up to 2 percent is proposed for 2014. When calculating the 96 percent resource extension for existing customers, only CRD classified as Extension CRD will be considered. Also, no extensions will be greater than an existing customer's load. Extension CRD amounts are set forth in Appendix A. Contractual extensions to First Preference customers are subject to specific legislation and are addressed in Section VI.

A. Extension for Existing Customers

Western proposes that existing customers will have a right to purchase a percentage of the Base Resource based on the ratio of each existing customer's Extension CRD to the total of all existing customers'' Extension CRD under the terms of this Section. However, for the period from 2005 through 2014, Western is proposing that SMUD will have a right to purchase 360/1,152 of the Base Resource, as referenced in the settlement agreement with SMUD, Contract DE–MS65–83WP59070, dated April 15, 1983. All other existing customers will have a right to purchase the remaining amount of the Base Resource, after it is adjusted to accommodate SMUD's rights and the resource pool. After 2014, SMUD's right to purchase the Base Resource will be adjusted to reflect the ratio of SMUD's Extension CRD (currently 361 MW) to the total of all existing customers'' Extension CRD. SMUD's rights will also be adjusted by 4 percent and up to an additional 2 percent to accommodate the resource pool.

Due to the diversity among existing customers' loads, including SMUD, existing customers' total Extension CRD exceeds the 1,152 MW referenced in the SMUD settlement agreement. Western's proposal will result in SMUD receiving a proportionately greater share of the Base Resource than other existing customers if the total Extension CRD remains at a level greater than 1,152 MW. Therefore, Western is also proposing that through 2014, all existing customers, excluding SMUD, be given the option to have Western purchase an additional increment of power, on a pass-through-cost basis, equal to the amount of power unavailable to them as a result of application of the 360/1,152 ratio. Existing customers must commit to the optional purchase for an annual or greater period.

After 2014, each existing customer, including SMUD and those customers that receive a new allocation under the Final Plan, will have a right to purchase a pro-rata amount of the Base Resource, adjusted for the incremental resource pool, based on their long-term purchase right to the Base Resource.

Western proposes the following extension formulas to determine existing customers' purchase right to the Base Resource. Application of these formulas will also determine each existing customer's right to the optional purchase. Examples of the formulas are provided in Appendix B. This calculation may be further adjusted for First Preference customers.

1. For the period 2005 through 2014, existing customers purchase right to an extension resource will be calculated as follows:

$$\text{a. SMUD's purchase right} = \frac{360}{1{,}152} \times \text{BR}$$

$$\text{b. Other existing customers purchase rights} = \frac{\text{A}}{\text{B}} \times \text{ABR}$$

Where:

A = Lesser of individual existing customer's Extension CRD as of December 31, 2001; or 104 percent of their maximum demand during CY 1997 through 2000. Western reserves the right to adjust the value of ''A'' when it is determined that the maximum demand is not reflective of an existing customer's load.

B = The sum of all values for ''A''.

BR = Base Resource available.

ABR = Adjusted Base Resource

$$= \left[\text{BR} - \left(\frac{360}{1{,}152} \times \text{BR} \right) \right] \times (100\% - \text{RP}\%).$$

RP% = Resource pool percentage.

2. Existing customer's (excluding SMUD) right to the optional purchase will be calculated as follows:

$$\text{individual existing customer's optional purchase} = \frac{\text{A}}{\text{B}} \times \text{TOP}$$

Where:

TOP = Total Optional Purchase

$$= \left(\frac{360}{1{,}152} - \frac{361}{\text{C}} \right) \times \text{BR} \times (100\% - \text{RP}\%).$$

A = Lesser of individual existing customer's Extension CRD as of December 31, 2001; or 104 percent of their maximum demand during CY 1997 through 2000. Western reserves the right to adjust the value of ''A'' when it is determined that the maximum demand is not reflective of an existing customer's load.

B = The sum of all values for ''A''.

BR = Base Resource available.

RP% = Resource pool percentage.

C = The sum of all existing customers', including SMUD, Extension CRD.

Western and SMUD have been negotiating an agreement whereby SMUD would waive its rights to the 360/1,152 ratio in return for additional services through 2004. If such an agreement is reached, these formulas will be appropriately adjusted.

3. For the period 2015 through 2024, the rights of all existing customers, including SMUD and customers receiving a new allocation from the initial resource pool under the Final Plan, will have a right to a resource extension equal to their pro-rata share of the Base Resource. To determine a customer's pro-rata share, each customer's percentage will first be adjusted based on the change in SMUD's percentage described earlier in this Section. All customers' percentages, including SMUD, will then be adjusted to accommodate the incremental resource pool as determined by Western, up to 2 percent.

B. Resource Pool Allocations:

Western proposes to establish a resource pool by reserving a portion of the power available after 2004 for allocation to eligible new and existing customers. Western will apply the following to determine resource pool allocations.

1. Resource Pool Amount: The resource pool will initially consist of up to 4 percent of the power resources available after 2004. This power will be subject to the terms and conditions specified in an electric service contract. An incremental resource pool is also proposed in the year 2014. The proposed incremental resource pool will consist of up to 2 percent of the power resources available after 2014, plus a portion of the resource that becomes available from adjusting SMUD's percentage. That portion will be equal to what SMUD would have been required to contribute to the initial resource pool. SMUD will also be subject to the 2 percent resource pool adjustment. Allocations for the incremental resource pool will be determined through a separate public process at a later date.

Western will, at its discretion, allocate a percentage of the initial resource pool to individual applicants that meet the eligibility criteria. This allocation percentage will be multiplied by the resource pool percentage to determine the applicant's percentage of the power resource. Allocations from the resource pool are separate from the resource extension.

2. General Eligibility Criteria: The following general eligibility criteria will be applied to all applicants seeking an allocation under the Final Plan.

a. Applicants must meet the preference requirement under section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), as amended and supplemented.

b. Applicants must be located within Sierra Nevada Region's Marketing Area. (Map of Marketing Area available upon request.)

c. Applicants that require power for their own use must be ready, willing, and able to receive and use Federal power.

d. Applicants that provide retail electric service must meet the requirements of Section IV.B.2.c above, and must require the power for electric service to their customers, not for resale to others.

e. Applicants must submit an application in response to the notice calling for applications issued by Western in the Federal Register in conjunction with the Final Plan. That notice will include the deadline for receipt of those applications.

f. Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 450b, as amended).

g. Applicants must have a load of 1 MW or greater. Western will normally not allocate amounts less than 1 MW; however, smaller allocations may be considered, provided Western can aggregate the applicant's load with other loads to schedule and deliver an aggregated 1 MW.

3. General Allocation Criteria: The following general allocation criteria will be applied to all applicants seeking an allocation under the Final Plan.

a. Allocations will be made in amounts as determined solely by Western in exercise of its discretion under Reclamation law.

b. Allocations under the Final Plan will be available to new qualified applicants and to existing customers whose Extension CRD set forth in Appendix A is not more than 15 percent of their peak load in CY 1996 and not more than 10 MW.

c. The maximum amount of capacity used to determine a resource pool allocation will be the applicant's peak demand during CY 1996 or the amount requested, whichever is less, rounded up to the nearest 100 kW.

d. An allottee will have the right to buy power from Western only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

e. A customer receiving power from the initial resource pool will be subject to the incremental resource pool adjustment in 2014.

V. General Criteria and Contract Principles

Western proposes to apply the following criteria and contract principles to all new and/or existing customers' contracts, except that certain criteria may not apply to First Preference customers' contracts, under the Final Plan:

A. Electric service contracts shall be executed within six (6) months of a contract offer, unless otherwise agreed to in writing by Western.

B. Percentages shall be subject to adjustment in the future as provided for in the Final Plan and the electric service contract.

C. All power supplied by Western will be delivered pursuant to a scheduling arrangement.

D. All power will be provided on a take-or-pay basis. A commitment must be made to take-or-pay for the service as of the date set forth in the contract. All costs associated with the products and services provided, including ancillary services and optional purchases, will be passed on to the customer(s) using the product or service.

E. Western will offer a contract amendment to existing customers and a new contract to new allottees to implement the Final Plan. Contract amendments and contracts shall require commitments to the Base Resource by the customer on or before December 31, 1999, and the optional purchase, as well as the Custom Product, on or before December 31, 2001. This will allow for power resources and products to be developed prior to final commitment by the customer.

F. Withdrawable power marketed under the Final Plan will be subject to withdrawal on a pro-rata basis upon six (6) months written notice, as determined by Western.

G. Upon request, Western shall assist each allottee and existing customer in obtaining third-party transmission arrangements for delivery of power allocated under the Final Plan; nonetheless, each entity is ultimately responsible for obtaining its own delivery arrangements beyond the CVP transmission system.

H. Contracts entered into under the Final Plan shall provide for Western to furnish electric service effective January 1, 2005 through December 31, 2024.

I. Specific products and services may be provided for periods of time as agreed to in the electric service contract.

J. Contracts entered into as a result of the Final Plan shall incorporate Western's standard provisions for power sales contracts, IRP, and GPCP.

K. Contracts will include a clause that allows Western to reduce or rescind a customer's power from Western upon six (6) months notice if Western determines that the customer is not using this power to serve its own loads, except as otherwise specified in Section III.

L. Any power not under contract may be allocated by the Administrator at any time, at the Administrator's sole discretion, or sold as deemed appropriate by Western.

M. Contracts will include a clause providing for Western to adjust the customers' percentage of the resource for the incremental resource pool.

VI. First Preference Entitlement and Allocation

The Trinity River Division Act (69 Stat. 719) and the New Melones Act of the Flood Control Act of 1962 (76 Stat. 1180) specified that contracts for the sale and delivery of the additional electric energy available from the CVP power system as a result of the construction of the plants authorized by these acts and their integration into the CVP system shall be made in accordance with preferences expressed in Federal Reclamation laws. These acts also provided that a first preference of 25 percent of the additional energy shall be given, under Reclamation law, to preference customers in the counties of origin (Trinity and Tuolumne and Calaveras) for use in those counties who are ready, able and willing to enter into contracts for the energy.

In order to meet the requirements of these acts, Western published the Final Withdrawal Procedures at 51 FR 7702 on March 5, 1986. The Final Plan will supersede the Final Withdrawal Procedures.

Western proposes to calculate and allocate the Maximum Entitlements of First Preference Customers (MEFPC), which is the maximum amount of energy available to First Preference customers/entities, in accordance with the following:

A. The MEFPC will be calculated separately for the New Melones Project, Calaveras and Tuolumne counties, and the Trinity River Division, Trinity County, (First Preference Projects), to determine the 25 percent of the additional energy made available to the CVP as a result of the construction of each of these projects. Since the acts do not specify the basis for calculating the 25 percent of additional energy, Western proposes that a previous 20-year average historical generation or actual years of data available, whichever time period is less, be used to determine the MEFPC. Based on the most current information available, this calculation would result in an estimated MEFPC of 95,766 MWh available to the CVP as a result of construction of the New Melones Project and an estimated MEFPC of 288,285 MWh available to the CVP as a result of construction of the Trinity River Division. The MEFPC will be

recalculated every five (5) years, with the initial recalculation pertaining to this Proposed Plan being completed by December 31, 2002.

B. Upon recalculation, if the MEFPC from a First Preference Project is 10 percent above or below the currently effective MEFPC from that First Preference Project, the MEFPC will be adjusted to reflect that increase or decrease. Western will notify the affected First Preference customer(s) at least six (6) months prior to an adjustment being made to the MEFPC. Upon request, and at its discretion, Western may make purchases necessary to compensate for any power loss experienced by a First Preference customer due to recalculation of the MEFPC. The costs for all purchases made on behalf of a First Preference customer(s) will be passed on to that First Preference customer(s).

C. An allocation made to a First Preference customer under the Final Plan will be based on the power requirements of that First Preference customer. The sum of allocations, including losses, shall not exceed the MEFPC from each First Preference Project, or a county of origin's share of the MEFPC, except as allowed under Section VI.G below.

D. Following execution of a contract amendment or contract pursuant to the Final Plan, Western will work with each First Preference customer/entity to identify its power requirements and the best use of the First Preference entitlement for that First Preference customer. Each First Preference customer/entity may elect one of the options set forth below.

1. *Full Requirements:* Power requirements (capacity and energy), adjusted for project use and transformation and transmission losses from the generation bus to the First Preference customer delivery point, will be at the Base Resource rates. Western will provide the First Preference customer full requirements up to its right to the MEFPC. Adjustment for transmission losses shall include losses for CVP transmission and third-party transmission. The contract between the First Preference customer and Western will include the appropriate losses and the load factor to be used to calculate the First Preference customer's maximum capacity and energy.

2. *Percentage:* A portion of the MEFPC will be converted to a percentage of the Base Resource. This option will be served on a take-or-pay basis. Each First Preference customer selecting this percentage allocation option will also be subject to the following:

a. A commitment to this option must be made no later than December 31, 2001. If a commitment is not made by December 31, 2001, the full requirements option will be deemed chosen.

b. This option will be applied in a manner similar to that of the other customers receiving a power allocation from the CVP.

c. The percentage allocation made to each First Preference customer under the Final Plan will be applied to the power resource which has been adjusted for project use and transformation and transmission losses from the generation bus to the First Preference customer delivery point, rounded up to the nearest 100 kW. Adjustment for transmission losses shall include losses for CVP transmission and third-party transmission.

d. The percentage calculation will be based on a First Preference customer's load profile for the most recent 12 months preceding the percentage calculation.

e. A First Preference customer may request an increase in its percentage allocation by notifying Western in writing at least seven (7) months in advance of the month in which the increase is to become effective (increases in percentages are effective the first day of a month).

E. A First Preference entity may exercise its rights to use a portion of the MEFPC by providing written notice to Western at least eighteen (18) months prior to the anniversary date of the First Preference Project located in its county. Anniversary date means the successive fifth year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the counties of origin. New applications for services to begin on January 1, 2005 under this Proposed Plan must be received eighteen (18) months prior to January 1, 2002 (i.e., July 1, 2000) for Trinity County and eighteen months prior to April 5, 2002 (i.e., October 5, 2000) for Calaveras and Tuolumne counties. Other anniversary years applicable to this Proposed Plan are 2007, 2012, 2017, and 2022.

F. If the request(s) of First Preference customers/entities for power, including adjustments for project use and losses, becomes greater than the MEFPC from that county's First Preference Project, then Western will allocate the remaining MEFPC to the First Preference customer(s)/entity(ies) first making a request for a power allocation.

G. Power allocated to First Preference customers/entities in Tuolumne and Calaveras counties will be subject to the following additional conditions:

1. Tuolumne and Calaveras counties shall each be entitled to one-half of the New Melones Project MEFPC.

2. If First Preference customers in either Tuolumne County or Calaveras County are not using their county's full one-half share, and a First Preference customer/entity in the other county requests power in an amount exceeding that county's one-half share, then Western will allocate the unused power, on a withdrawable basis, to the requesting First Preference customer/entity. Such power may be withdrawn for use by a First Preference customer/entity in the county not using its full one-half share upon six (6) months written notice from Western.

H. Trinity County is currently the sole recipient of the Trinity River Division's First Preference rights.

I. For planning purposes, First Preference customers may be required to provide forecasts and other information required by Western as set forth in the electric service contract.

J. The general criteria and contract principles set forth in Sections V.A, C, and F through J of this Proposed Plan will apply to First Preference customers.

VII. Transmission Service

The Federal Energy Regulatory Commission (FERC) issued two closely related final rules. The first rule, Order No. 888, issued April 24, 1996 (Docket Nos. RM95–8–000 and RM94–7–001), requires public utilities owning, controlling, or operating transmission lines to file nondiscriminatory open access tariffs that offer others the same transmission service they provide themselves. The second rule, Order No. 889, issued April 24, 1996 (Docket No. RM95–9–000), requires public utilities to implement standards of conduct and an Open Access Same-time Information System (OASIS) to share information about available transmission capacity. Western has agreed to follow the spirit and intent of FERC Orders 888 and 889. Therefore, Western proposes to provide transmission services separately from power services. Sierra Nevada Region's transmission capability will be offered as a separate unbundled service to all preference customers receiving power pursuant to the Final Plan. Each customer will have an option to purchase transmission sufficient to deliver the maximum amount of power it receives under the Final Plan. Surplus transmission will be available to all

preference customers, as well as to other entities.

Issued in Washington, DC on February 19, 1997.

Joel K. Bladow,

Assistant Administrator.

APPENDIX A.—EXISTING CUSTOMERS' CRD AMOUNTS

Existing customers	CRD [1] (as of proposed plan publication date) (kW)	Extension CRD [1 2] (CRD less excluded types of power) [3 4] (kW)
Air Force—Beale	21,575	21,575
Air Force—McClellan	12,000	12,000
Air Force—Onizuka	1,500	1,500
Air Force—Travis	12,651	12,651
Air Force—Travis / David Grant Medical Center	4,000	4,000
Air Force—Travis Wherry Housing	1,400	1,400
Alameda, City of	21,145	21,145
Arvin-Edison Water Storage District	30,000	30,000
Avenal, City of	622	622
Banta-Carbona Irrigation District	3,700	3,700
Bay Area Rapid Transit District	4,000	4,000
Biggs, City of	4,200	4,200
Broadview Water District	500	500
Byron-Bethany Irrigation District	2,200	2,200
Calaveras Public Power Agency	7,000	.....
California State University, Sacramento—Nimbus	40	40
Castle Joint Powers Authority	3,000	.....
Cawelo Water District	500	500
Corrections—California State Prison-Sacramento	2,300	2,300
Corrections—Deuel Vocational Institute	1,700	1,700
Corrections—Northern California Youth Center	1,700	1,700
Corrections—Sierra Conservation Center	3,000	.....
Corrections—Vacaville Medical Facility	1,800	1,800
Defense Logistics Agency—Sharpe Facility	4,000	4,000
Defense Logistics Agency—Tracy Facility	3,800	3,800
Delano-Earlimart Irrigation District	987	987
East Bay Municipal Utility District	1,965	1,965
East Contra Costa Irrigation District	2,000	2,000
East Contra Costa Irrigation District, P.P. #3	500	500
Energy—Lawrence Berkeley National Laboratory	11,000	11,000
Energy—Lawrence Livermore National Laboratory	16,711	16,711
Energy—Site 300	2,500	2,500
Energy—Stanford Linear Accelerator Center	47,403	38,403
Glenn-Colusa Irrigation District	3,343	3,343
Gridley, City of	9,400	9,400
Healdsburg, City of	3,241	3,241
James Irrigation District	987	987
Kern-Tulare Water District	987	987
Lassen Municipal Utility District	3,000	3,000
Lindsay-Strathmore Irrigation District	987	987
Lodi, City of	13,236	13,236
Lompoc, City of	5,197	5,197
Lower Tule River Irrigation District	1,965	1,965
Modesto Irrigation District	10,805	10,805
NASA—Ames Research Center	80,000	80,000
NASA—Moffett Federal Airfield	5,009	.....
Navy—Concord Weapons Station	2,398	2,398
Navy—Dixon Radio Station	915	915
Navy—Lemoore Air Station	18,000	18,000
Navy—Mare Island Shipyard	6,000	6,000
Navy—Oakland Army Base	2,275	2,275
Navy—Oakland Supply Center	7,000	7,000
Navy—Stockton Communications Station	3,700	3,700
Navy—Treasure Island Station	4,000	4,000
Palo Alto, City of	175,000	175,000
Parks & Recreation, California Department of—Folsom	100	100
Parks Reserve Forces Training Area	500	500
Patterson Water District	2,000	2,000
Plumas-Sierra Rural Electric Cooperative	25,000	25,000
Provident Irrigation District	750	750
Rag Gulch Water District	500	500
Reclamation District 2035	1,600	1,600

APPENDIX A.—EXISTING CUSTOMERS' CRD AMOUNTS—Continued

Existing customers	CRD [1] (as of proposed plan publication date) (kW)	Extension CRD [1 2] (CRD less excluded types of power) [3 4] (kW)
Redding, City of	116,000	116,000
Roseville, City of	69,000	69,000
Sacramento Municipal Utility District[5]	361,000	361,000
Sacramento Municipal Utility District	100,000	.....
San Juan Water District	1,000	1,000
San Luis Water District-Fittje	3,250	3,250
San Luis Water District-Kaljian	3,400	3,400
Santa Clara, City of	216,532	136,532
Santa Clara Valley Water District	987	987
Shasta Lake, City of	11,450	11,450
Sonoma County Water Agency	1,500	1,500
Terra Bella Irrigation District	987	987
Trinity County Public Utilities District	17,000	.....
Tuolumne Public Power Agency	7,000	.....
Turlock Irrigation District	3,941	3,941
Ukiah, City of	8,773	8,773
University of California, Davis	14,682	14,682
West Side Irrigation District	2,000	2,000
West Stanislaus Irrigation District	5,200	5,200
Westlands Water District, Assumed Point of Delivery	6,684	6,684
Westlands Water District, Pumping Plant #7–1	3,200	3,200
Westlands Water District, Pumping Plant #6–1	1,850	1,850
Temporarily unallocated NDA Act power	5,500	5,500
	1,580,230	1,349,221

Notes:

[1] CRD temporarily laid off and reallocated to other existing customers is reflected in this Appendix A, under both CRD and Extension CRD, as being returned to the existing customer who received the original allocation.

[2] The Extension CRD will be reduced if an existing customer is not using its full CRD (based on the peak demand experienced during CY 1997 through 2000).

[3] Exclusions are Diversity and Curtailable Power, peaking/excess capacity, First Preference entitlements, and NDA Act power not used for military loads.

[4] May be adjusted for conversion from project use power to preference power due to Federal facility transfers to existing project use customers.

[5] Sacramento Municipal Utility District's Extension CRD will be 360,000 kW if the 360/1,152 ratio is used for resource extension purposes.

Appendix B—Examples of Existing Customers' Resource Extension Proposal 2005 Through 2014

Assumptions:

- An existing customer with an Extension CRD of 100 MW.
- Base Resource after 2004 is 1000 MW.
- Sum of all existing customers' Extension CRD is 1,349 MW.
- Initial resource pool is 4%.
- Incremental resource pool is 2%.
- All amounts are rounded.

1. For the period 2005 through 2014, an existing customer's percentage right to a resource extension will be calculated as follows:

$$\text{SMUD's purchase rights} = \frac{360}{1{,}152} \times \text{BR}$$

$$\text{Existing 100 MW customer's purchase rights} = \frac{\text{A}}{\text{B}} \times \text{ABR}$$

Where:

A=Lessor of individual existing customer's (excluding SMUD) Extension CRD as of December 31, 2001; or 104 percent of their maximum demand during CY 1997 through 2000. Western reserves the right to adjust the value of ''A'' when it is determined that the maximum demand is not reflective of an existing customer's load.

B=The sum of all values for ''A''.

BR=Base Resource available.

ABR=Adjusted Base Resource

$$= \text{BR} - \left(\frac{360}{1{,}152} \times \text{BR} \right) \times (100\% - \text{RP}\%).$$

RP%=Resource pool percentage.
Calculation:
SMUD's purchase rights=
(360/1,152)×BR
(360/1,152)×1,000
0.3125×1,000
312.5 MW
Existing 100 MW customer's purchase rights=
(A/B)×ABR
(100/988)×ABR
0.101×660
67 MW
ABR=
{BR–[(360/1,152)×BR]}×(100%–RP%)
{1,000–[(360/1,152)×1,000]}×(100%–4%)
[1,000–(0.3125×1,000)]×96%
(1,000–312.5)×96%
687.5×96%
660 MW

2. Existing customer's (excluding SMUD) rights to the optional purchase will be calculated as follows:

$$\text{individual existing customer optional purchase} = \frac{A}{B} \times TOP$$

Where:
A = Lessor of individual existing customer's Extension CRD as of December 31, 2001; or 104 percent of their maximum demand during CY 1997 through 2000. Western reserves the right to adjust the value of ''A'' when it is determined that the maximum demand is not reflective of an existing customer's load.
B = The sum of all values for ''A''.
C = The sum of all existing customers', including SMUD, Extension CRD.
BR = Base Resource available.
RP% = Resource pool percentage.
TOP = Total optional purchase

$$= \left(\frac{360}{1{,}152} - \frac{361}{C} \right) \times BR \times (100\% - RP\%).$$

Calculation:
Individual existing 100 MW customer's optional purchase=
$(A/B \times TOP$
$(100/988) \times TOP$
0.101×43.1
4.4 MW
TOP=
$\{[(360/1{,}152) - (361/1{,}349)] \times BR\} \times (100\% - RP\%0)$
$\{[(360/1{,}152) - (361/1{,}349)] \times 1{,}000\} \times (100\% - 4\%)$
$[(.3125 - 0.2676) \times 1{,}000] \times 96\%$
$(0.0449 \times 1{,}000) \times 96\%$
$44.9 \times 96\%$
43%

[FR Doc. 97–4695 Filed 2–25–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00469; FRL–5588–8]

Pesticide Applicator Certification and Training; Renewal of Pesticide Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces that the following Information Collection Request (ICR) is coming up for renewal. This ICR, Certification of Pesticide Applicators (40 CFR part 171), ICR No. 0155.05, OMB No. 2070–0029, will expire on June 30, 1997. Before submitting the renewal packages to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before April 28, 1997.

ADDRESSES: Submit written comments identified by the docket control number OPP–00469 and ICR number 0155.05 by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Room 1132 of 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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00469 and ICR number 0155.05. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document 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 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 Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7506C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305-6475, e-mail: kramer.ellen@epamail.epa.gov. Copies of the complete ICR and accompanying appendices may be obtained from the OPP docket at the above address or by contacting Ellen Kramer at the telephone number or address listed above.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of this document and the ICR are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

I. Information Collection Requests

EPA is seeking comments on the following Information Collection Request (ICR).

Title: Certification of Pesticide Applicators (40 CFR Part 171). ICR No.

0155.05. OMB No. 2070-0029. Renewal. Current expiration date: June 30, 1997.

Affected entities: Parties affected by this information collection are pesticide applicators who require certification to apply restricted use pesticides, and States, Indian tribes, and Federal Agencies with EPA-approved certification plans.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act allows a pesticide to be classified as ''restricted use'' if the pesticide meets certain toxicity criteria. Restricted use pesticides, because of their potential to harm people or the environment, may be applied only by a certified applicator or someone under the direct supervision of a certified applicator. In order to become a certified applicator, a person must meet certain standards of competency. The primary mechanism for certifying pesticide applicators is State certification plans approved by EPA. 40 CFR part 171 establishes the criteria for State and EPA-administered certification plans. In addition, these regulations establish criteria for certification plans from Federal agencies or Indian tribes who wish to develop their own programs in lieu of using State certification programs.

The recordkeeping and reporting requirements in these regulations allow the Agency to ensure that restricted use pesticides are used only by or under the direct supervision of properly trained and certified applicators, and to monitor the application of restricted use pesticides.

Burden Statement: Small entities are affected by this information collection activity as the regulations apply to individuals who are certified applicators. However, the records required of pesticide applicators and their employees are minimal and would generally be kept for the applicator's own use even in the absence of this regulation. The information is to be retained for 2 years and is only made available upon request by State or EPA authorized officials. States supply information through annual reports on the status of certified applicators, enforcement of restricted use pesticides, and any significant changes in the plan.

The annual respondent burden for this program is estimated to average 5 hours for pesticide dealer recordkeeping, 3.5 hours for certified applicator recordkeeping, 10 minutes for completing applicator certification forms, and 150 hours for State annual reports, including time for: reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection.

Any Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are contained in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

Send comments regarding these matters, or any other aspect of these information collections, including suggestions for reducing the burdens, to the docket under ADDRESSES listed above.

List of Subjects

Environmental protection and Information collection requests.

Dated: February 14, 1997.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–4623 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5694–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notification of Episodic Releases of Oil and Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Notification of Episodic Releases of Oil and Hazardous Substances, EPA ICR Number 1049.07, OMB Control Number 2050–0046, expiring June 30, 1997. Before submitting the ICR renewal package to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 28, 1997.

ADDRESSES: Comments should be submitted in triplicate to the following address: Office of Emergency and Remedial Response (5201G), Attention: Superfund Docket Clerk, Docket Number 102RQ–ER, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (703) 603–9232. Materials relevant to this rulemaking are contained in Public Docket No. 102RQ–ER. This docket is located at 1235 Jefferson Davis Highway (ground floor), Arlington, VA. Dockets may be inspected, by appointment only, from 9:00 a.m. to 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, (703) 603–9086. Facsimile number: (703) 603–9104. Electronic address: beasley.lynn@epamail.epa.gov. Note that questions but not comments will be accepted electronically.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are those persons in charge of a facility or vessel that has released a reportable quantity or more of a hazardous substance into the environment or that has discharged oil into U.S. waters, causing a sheen, violating applicable water quality standards, or causing a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Title: Notification of Episodic Releases of Oil and Hazardous Substances, EPA ICR Number 1049.07, OMB Control Number 2050–0046, expiring June 30, 1997.

Abstract: This ICR addresses the reporting and record keeping activities required to comply with the release notification requirements for hazardous substances and oil specified in section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, and section 311 of the Clean Water Act (CWA). These reporting requirements are codified at 40 CFR parts 110, 117, and 302. This ICR renews the collection activity previously approved under OMB No. 2050–0046 and applies to the period

July 1, 1997 through June 30, 2000. Estimates of the burden placed on industry to comply with the release notification requirements are presented annually.

CERCLA section 103(a) and CWA section 311 require the person in charge of a facility or vessel to immediately notify the National Response Center (NRC) of hazardous substance releases into the environment and oil discharges into U.S. waters. The regulated community is expected to:

- Gather necessary release data, such as the time, quantity, and source of the release;
- Brief the facility manager;
- Consult with the environmental compliance expert;
- Report the release to the NRC using a toll-free telephone number, a facsimile number, or a telex number; and
- Keep a log of release data such as the time, date, and circumstance of the release. (This information is expected, but not required under the regulations).

There are no record keeping requirements specified under CERCLA section 103(a), CWA section 311, or their implementing regulations. The person in charge of the facility or vessel, however, may elect to maintain a log detailing the time, date, and circumstances associated with the reported release. The purpose of maintaining a log of reported releases is to track correspondence with response authorities and to document compliance with release notification requirements under CERCLA and the CWA. Because the respondent will probably perform this activity, burden and cost estimates associated with record keeping are included in the ICR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. For this ICR, EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The current ICR assumes that notification requires approximately two person-hours for releases of hazardous substances and oil, including one hour of technical personnel time and one hour of managerial time. Although neither CERCLA nor CWA require that records of releases be kept, a facility would probably keep a log of any calls made to government organizations. The burden associated with internal record keeping is estimated at one technical hour and one clerical hour per release; a ratio of one-tenth managerial hour to each hour of clerical time is also assumed.

The estimated costs of completing the episodic release reports required under CERCLA and the CWA are a function of the time expended by industrial personnel and the hourly rates for the appropriate labor categories. The number of burden hours is the same for the renewal ICR as for the current ICR. The unit cost estimates for each category of activities are based upon a managerial wage rate of $38.72 per hour, a technical wage rate of $28.37 per hour, and a clerical wage rate of $17.48 per hour. These wage rates, from the Bureau of Labor Statistics, are the same as those used in the notice for renewal of the Spill Prevention and Control Countermeasure ICR (61 FR 15246, April 5, 1996). They include wages and salaries, benefit costs including paid leave, supplemental pay, insurance, retirement and savings, legally required benefits, severance pay, and supplemental unemployment benefits and overhead costs, calculated in December, 1995 dollars.

BURDEN HOURS AND UNIT COST PER RESPONDENT ACTIVITY AND ANNUAL BURDEN HOURS AND COSTS INCURRED BY A TYPICAL RESPONDENT

Collection activity	Management (38.72/hr)	Technical ($28.73/hr)	Clerical $17.48/hr	Total burden hours	Unit cost
Initial Telephone Call	1.0	1.0	0	2.0	$67.09
Record keeping	0.1	1.0	1.0	2.1	49.72
Annual Burden for a Typical Release	1.1	2.0	1.0	4.1	116.81

Past release reports were used to project future release reports. The next exhibit shows the projected annual release reports, burden hours, and costs under the current ICR. Projections were based on the conservative use of assumptions and methodologies that tend to err on the side of over predicting the number of releases.

ESTIMATED ANNUAL BURDEN HOURS AND COSTS

Type of release	Collection activity	Number of reportable releases/year	Unit burden hours	Unit cost	Total burden hours	Annual cost (Thousand $)
All CERCLA Hazardous Substances	Telephone Notification	6,519	2.0	$67.09	13,038	$437
	Record keeping	6,519	2.1	49.72	13,690	324
Oil	Telephone Notification	22,685	2.0	67.09	45,307	1,522
	Record keeping	22,685	2.1	49.72	47,639	1,128
Total Aggregate Releases	Telephone Notification	29,204	2.0	67.09	58,408	1,959
	Record keeping	29,204	2.1	49.72	61,329	1,452
Annual Total		29,204	4.1	116.81	119,737	3,411

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 13, 1997.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 97–4752 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5685–9]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before April 28, 1997.

ADDRESSES: Written comments should be sent to: Docket A–91–60, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. Interested persons may make a copy of the ICR without charge from the docket. The docket is open between 8 a.m. and 4 p.m. on weekdays. The telephone number is (202) 260–7549, and the fax number is (202) 260–4400. To expedite review of comments, a second copy of the comments should be sent to Mavis Sanders, Stratospheric Protection division, Mail Code 6205J, EPA, 401 M Street, Washington, DC 20460. Overnight mail should be sent to our 501–3rd Street, NW, Washington, DC 20001 street address.

FOR FURTHER INFORMATION CONTACT: Mavis Sanders at (202) 233–9737, or fax (202) 233–9665.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action include manufacturers, distributors, retailers, importers, and recyclers/reclaimers that manufacture, sell or distribute products made with or containing class I or class II substances.

Title: Protection of Stratospheric Ozone: Labeling, Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060–0342, Expiration Date: 9/30/97.

Abstract: The Office of Air and Radiation (OAR) promulgated regulations on February 11, 1993, and a subsequent amendment on January 19, 1995, that became effective as of October 1, 1995. Pursuant to the enactment of the reauthorized Paperwork Reduction Act (PRA), labeling requirements are no longer exempt from review under the PRA. OAR is submitting this renewal ICR relative to the requirements in effect on October 1, 1995, in compliance with the reauthorized PRA.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The regulations require that all containers of class I and II substances, products containing class I substances, and products manufactured with class I substances be labeled. The required warning must state: ''WARNING: Contains (Manufactured with) [insert name of substance], a substance which harms public health and environment by destroying the ozone in the upper atmosphere.'' Labels must be applied when a product enters into interstate commerce or is imported into the U.S. Exceptions are available under a variety of circumstances including:

- Those products manufactured prior to May 15, 1993, do not need to be labeled.
- Those products where a component product made with a class I substance is sold to another party and incorporated into another product do not need to bear the warning label.
- Those products manufactured by a company that achieved a 95% reduction over its 1990 use of methyl chloroform and CFC–113 used as solvents (if petitioned before May 15, 1994) are exempt from bearing the warning label.
- Incidental uses of class I substances are exempt.
- Products that are manufactured with class I substances, where those substances are destroyed at the end of the process, are exempt from labeling.
- Waste containing a class I substance and bound for discard is exempt.
- Spare parts manufactured with a class I substance and sold to a distributor or a repairperson, to be used for repair purposes, are exempt from the label pass-through requirement.
- Products repaired using a class I substance do not need to be labeled.
- Products containing trace quantities of class I impurities resulting from inadvertent production, unreacted feedstock, or process agents are exempt.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: EPA estimates the projected hour burden of the renewed information collection is an annual total of 3024 hours. In comparison with the original labeling ICR, this estimate of hourly burden reflects a 40% reduction in the number of manufacturers that use a class I substance in their manufacturing process. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 14, 1997.

Paul Stolpman,

Office Director, Office of Air Programs.

[FR Doc. 97–4754 Filed 2–24–97; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00207; FRL–5587–5]

Agency Information Collection Activities; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection described below. The ICR is a continuing ICR entitled ''Toxic Substances Control Act (TSCA) Section 8(a) Chemical-Specific Rules,'' EPA ICR No. 1198.05, OMB No. 2070-0067, which relates to reporting requirements found at 40 CFR part 704, subpart B. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before April 28, 1997.

ADDRESSES: Submit three copies of all written comments to: TSCA Document Receipts (7407), Room E-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-7099. All comments should be identified by administrative record number AR-171 and ICR number 1198.05. This ICR is available for public review at, and copies may be requested from, the docket address and phone number listed above.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 administrative record number AR-171 and ICR number 1198.05. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact Keith Cronin, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–8157, Fax: 202–260–1096, e-mail: cronin.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of this document and the ICR are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations''(http://www.epa.gov/fedrgstr/).

I. Background

Entities potentially affected by this action are persons who manufacture, process or import, or who propose to manufacture, process or import, chemical substances and mixtures. For the collection of information addressed in this notice, EPA would like to solicit comments to:

(i) 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.

(ii) 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.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) 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.

II. Information Collections

EPA is seeking comments on the following Information Collection Request.

Title: Toxic Substances Control Act (TSCA) Section 8(a) Chemical-Specific Rules, EPA ICR No. 1198.05, OMB No. 2070-0067. Expires August 31, 1997.

Abstract: TSCA section 8(a) authorizes the Administrator of EPA to promulgate rules that require persons who manufacture, import or process chemical substances and mixtures, or who propose to manufacture, import or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be reasonably required. Any chemical covered by TSCA for which EPA or another Federal agency has a reasonable need for information and which cannot be satisfied via other sources is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities and other members of the public will also have access to this information for their own use.

Responses to the collection of information are mandatory (see 40 CFR part 704, subpart B). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The burden to respondents for complying with this ICR is estimated to total 275 hours per year with an annual cost of $15,745. These totals are based on an average burden of approximately 69 hours per response for an estimated four respondents making one response annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and

disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Public Record

A record has been established for this action under docket control number ''OPPTS-00207'' (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 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@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 action, 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 and Information collection requests.

Dated: February 11, 1997.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–4777 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5694–3]

Effluent Guidelines Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has obtained approval in U.S. District Court to modify a Consent Decree covering the Agency's Effluent Guidelines Program. The modified Decree extends deadlines for several rulemaking projects described in the 1996 Effluent Guidelines Plan.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering and Analysis Division (4303), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460; telephone 202–260–7150. E-mail: strassler.eric@epamail.epa.gov

SUPPLEMENTARY INFORMATION: EPA published its 1996 Effluent Guidelines Plan on October 7, 1996 (61 FR 52582). The Plan described the Effluent Guidelines Program and listed regulations that the Agency was developing or intended to develop. As mentioned in the Plan, several of these regulation projects are required by a Consent Decree in *Natural Resources Defense Council et al v. Browner* (D.D.C. 89–2980, January 31, 1992 (the ''Consent Decree''). Table 1 in the Plan listed deadlines for the rules, with a footnote explaining that EPA was discussing extensions to the deadlines with the Natural Resources Defense Council (NRDC). See 61 FR 52583.

EPA and NRDC have agreed on revised deadlines and related adjustments for several of the rules listed in the Plan, and have obtained Court approval of modifications to the Decree. An unopposed motion to modify the Decree was filed in U.S. District Court for the District of Columbia on January 31, 1997, and the motion was approved by District Judge Royce C. Lamberth on February 4, 1997. In addition to extending several deadlines, the modifications allow the Agency to merge two ongoing rules, Metal Products and Machinery Phases 1 and 2, into a single project. The modified dates are listed in the following table.

MODIFICATIONS TO EFFLUENT GUIDELINES DEADLINES

Category	Proposal	Final action
Centralized Waste Treatment (proposed 1/27/95, 60 FR 5464)	.....	8/15/99
Pharmaceutical Manufacturing (proposed 5/2/95, 60 FR 21592)	.....	4/98
Industrial Laundries	9/97	6/99
Transportation Equipment Cleaning	1/98	2/00
Landfills and Incinerators	11/97	11/99
Metal Products and Machinery (Phase 1 proposed 5/30/95, 60 FR 28209)	10/00	12/02

EPA and NRDC signed a related Settlement Agreement stating the Agency's intent to take final action on air emission standards for pharmaceutical production, under Section 112 of the Clean Air Act, jointly with the Pharmaceutical Manufacturing Effluent Guidelines in April 1998. A separate notice describing this action was published on February 21, 1997 at 62 FR 8012.

The parties also agreed on revised deadlines for completion of four Preliminary Studies, which the Agency uses to support decisions on selecting industries for additional rulemaking. The deadlines for the studies are as follows:

Chemical Formulators and Packagers: April 1997.
Feedlots: 1998.
Urban Stormwater: 1998.
Airport De-Icing: 1999.

EPA and NRDC are continuing negotiations on deadlines for other rules covered by the Decree.

Dated: February 19, 1997.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 97–4756 Filed 2–25–97; 8:45 am]

BILLING CODE: 6560–50–P

[OPP–00471; FRL–5589–5]

EPA's Interim Approach to Implementation of the 1996 Food Quality Protection Act; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its interim approach to implementation of the new food safety requirements of the Food Quality Protection Act through a Pesticide Registration (PR) Notice 97-1. Interested parties may request this document as described in the ADDRESSES unit of this notice.

ADDRESSES: PR Notice 97-1 is available by mail from the Policy and Special Projects Staff, Mail Code 7506C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location,

telephone number, and e-mail address: Rm. 1120, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7102, e-mail: jones.jim@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: By mail: Jane Hopkins, Policy and Special Projects Staff (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1113, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7102, e-mail: hopkins.jane@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of this document and the PR notice are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http:// www.epa.gov/fedrgstr/).

EPA is announcing its interim approach to implementing the new food safety requirements of the Food Quality Protection Act (FQPA), enacted in August 1996. Until permanent policies can be developed, this interim guidance will enable EPA to make sound, timely pesticide regulatory decisions that meet the stringent standards of the new law, including specific safety findings for infants and children.

The FQPA calls for additional scientific analyses which have not routinely been a part of EPA's pesticide risk assessment procedures, such as consideration of risks from chemicals that share a common mechanism of toxicity, potential endocrine effects, and combined exposures from dietary and nondietary sources.

The interim measures will allow the Agency to act on pending pesticide applications while promoting sound protective decisions that are consistent with current scientific knowledge, available data, and reasonable assumptions. As more data become available and new knowledge emerges, the Agency's approach will be flexible enough to incorporate them. The notice also explains what EPA's priorities will be for review of pesticide applications under the interim guidance. EPA will give highest priority to reveiw of requests for pesticide uses to deal with emergency conditions. EPA also will give priority to reduced risk and biological pesticides.

This Federal Register notice announces the availability of the PR Notice and instructs registrants on how to obtain it.

Lists of Subjects

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

Dated: February 13, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–4619 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[AD–FRL–5694–8]

Industrial Combustion Coordinated Rulemaking Advisory Coordinating Committee Notice of Upcoming Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Industrial Combustion Coordinated Rulemaking (ICCR) Federal Advisory Committee notice of upcoming meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the Coordinating Committee) in the Federal Register on August 2, 1996 (61 FR 40413).

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the Coordinating Committee is scheduled for March 19 and 20, 1997. Further information on the Coordinating Committee may be obtained by accessing the TTN.

ADDRESSES: The Coordinating Committee meeting on March 19 and 20, 1997 will be held at the Hotel Inter-Continental, 505 North Michigan Avenue, Chicago, Illinois (312–944–4100).

INSPECTION OF DOCUMENTS: Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at U.S. EPA Air and Radiation Docket and Information Center, Docket No. A–96–17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter or Sims Roy, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group (MD–13), Research Triangle Park, NC 27711, telephone numbers (919) 541–5251 and 541–5263, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards. The TTN can be accessed through the Internet or directly by modem. Through the Internet, the TTN may be accessed at:

TELNET: ttnbbs.rtpnc.epa.gov
FTP: ttnftp.rtpnc.epa.gov
WWW: ttnwww.rtpnc.epa.gov

When accessing the WWW site, select TTN BBS Web from the first menu, then select Gateway to TTN Technical Areas from the second menu, and finally, select ICCR-Industrial Combustion Coordinated Rulemaking from the third menu.

By modem, dial (919) 541–5742 for up to a 14,400 bits-per-second information transfer connection. After logging on to the system, select Gateway to the TTN Technical Areas from the menu and then select ICCR-Industrial Combustion Coordinated Rulemaking from the next menu. Access to the TTN through Telnet will look the same as if you had dialed by modem, so these instructions should be followed for a Telnet connection.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541–5384.

All Coordinating Committee meetings will be announced in the Federal Register. Work Group meetings will be announced on the TTN. Individuals interested in Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN on a regular basis for information.

Two copies of the Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request to the Docket (ask for item #I–B–1). The purpose of the Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission

standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act, and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

The lists of Coordinating Committee and Work Group members are available from the TTN for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

The next meeting of the Coordinating Committee will be held March 19 and 20, 1997 in Chicago, Illinois at the Hotel Inter-Continental located at 505 North Michigan Avenue, Chicago, Illinois from about 8:30 a.m. to about 6:00 p.m. on both days; an evening session may be held on March 19, if necessary, to ensure completion of the agenda. The agenda for this meeting will include reports from the Work Groups on their progress and planning, discussion of data gathering efforts to support the ICCR, and a discussion of direction and guidance from the Coordinating Committee to the Work Groups. This meeting will also be open to the public, and an opportunity will be provided for the public to offer comments and address the Coordinating Committee.

It is anticipated that the next meeting of the Coordinating Committee, following the meeting in March, will be May 21 and 22, 1997 in Research Triangle Park, North Carolina.

Dated: February 20, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–4757 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30430; FRL–5589–3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications and an amendment of an application to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 28, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30430] and the file symbols 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: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., 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 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–30430]. 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 submission can be found below in this document.

Information submitted as a comment concerning this notice 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 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 holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7501W), Attn: (Regulatory Action Leader named in each registration), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person: Contact the Regulatory Action Leader named in each registration at the following office location, telephone number, and e-mail address.

Regulatory Action Leader	Office location/telephone number	Address
Denise Greenway,	Rm. CS51B6, (703–308–8263); e-mail: greenway.denise@epamail.epa.gov.	Environmental Protection Agency Westfield Building North Tower, 2800 Crystal Drive Arlington, VA 22202
Teung Chin,	Rm. CS51B6, (703–308–1259); e-mail: chin.teung@epamail.epa.gov.	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications and an amendment of an application as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 275–RRE. Applicant: Abbott Laboratories, Dept. 28R, Bldg., A1, 1401 Sheridan Road, North Chicago, IL 60064–4000. Product name: Retain Plant Growth Regulator Soluble Powder. Biological Plant Regulator. Active ingredient: Aminoethoxyvinylglycine at 15 percent. Proposed classification/Use: None. For use on apples and pears. (D. Greenway)

2. File Symbol: 275–IO. Applicant: Abbott Laboratories. Product name: ABG-3097 Plant Growth Regulator Soluble Powder. Biological Plant Regulator. Active ingredient: Aminoethoxyvinylglycine at 86 percent. Proposed classification/Use: None. For nonfood greenhouse use. (D. Greenway)

3. File Symbol: 275–II. Applicant: Abbott Laboratories. Product name:

ABG-3097 Technical Powder. Biological Plant Regulator. Active ingredient: Aminoethoxyvinylglycine at 86 percent. Proposed classification/Use: None. For formulation into end-use products for apples and pears, and for nonfood greenhouse uses. (D. Greenway)

4. File Symbol: 59174–U. Applicant: Appropriate Technology, Inc., 3601 Garden Brook, Dallas, TX 75234. Product name: Plant Extract 620. Plant Regulator/Nematicide. Active ingredient: Plant extract at 100 percent. Proposed classification/Use: None. For manufacturing use only. (T. Chin)

5. File Symbol: 59174–E. Applicant: Appropriate Technology, Inc. Product name: Sincocin. Plant Regulator/ Nematicide. Active ingredient: Plant extract at 0.56 percent. Proposed classification/Use: None. For food/feed and ornamental crops. (T. Chin)

II. Amended Product Containing a New Active Ingredient

EPA issued a notice, published in the Federal Register of May 10, 1994 (59 FR 24151; FRL–4770–4), which announced that Appropriate Technology, Inc., 3601 Garden Brook, Dallas, TX 75234, had submitted an application to register the pesticide product Agrispon Technical, (File Symbol 59174–G) containing the active ingredient plant extract at 0.56 for manufacturing use to be formulated into end-use products and for use on food, ornamentals, and forestry. The registrant later amended (File Symbol 59174–G), which was represented as a Technical in the Federal Register, and is now an end-use product called ''Agrispon'' still at 0.56 percent of the chemical for use on feed/food and ornamental crops. (T. Chin)

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30430] (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 Rm. 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.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 7, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4629 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66236; FRL 5587–8]

Notice of Receipt of Requests to Voluntarily Cancel 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 requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 25, 1997 orders will be issued cancelling all of these registrations.

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, telephone number and e-mail: 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 the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 22 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00201	Benomyl Lawn Fungicide Granules	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000016–00131	Dragon Benomyl Wettable	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000241–00332	Tri-5 Herbicide	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
000352 WA–91–0021	DuPont Glean Fertilizer Compatible Herbicide	2-Chloro-*N*-(((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
000352 WA–91–0022	Harmony Extra Herbicide	Methyl 3-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
		Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino)
000352 WA–91–0023	Express Herbicide	Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino)
000352 WA–91–0024	DuPont Finesse Herbicide	2-Chloro-*N*-(((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl) Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
000352 WA–94–0015	DuPont Ally Herbicide	Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
000432–00770	Foliafume XK Insecticide	Pyrethrins Rotenone
002792–00034	APL-Luster 245 with Scald Inhibitor	Diphenylamine
002792–00044	No Scald DPA Powder No. 31	Diphenylamine
003125–00375	Salute 4EC Herbicide	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha) 1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
004816–00661	Dog Dip E.C.	Rotenone Cube Resins other than rotenone
007969 TX–96–0002	Slam	1-Naphthyl-*N*-methylcarbamate
052200–00003	Greensward Team & Fertilizer	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha) *N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)
052200–00004	Greensward Premium Team + Fertilizer	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha) *N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)
055392–00001	Manna Pro Rabon Mineral Block	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethylphosphate
056228 IL–89–0006	Compound DRC-1339 98% Concentrate	3-Chloro-p-toluidine hydrochloride
056228 IN–90–0003	Compound DRC-1339 98% Concentrate	3-Chloro-p-toluidine hydrochloride
056228 LA–93–0020	Compound DRC-1339 98% Concentrate	3-Chloro-p-toluidine hydrochloride
056228 TX–94–0012	Compound DRC-1339 Concentrate-Feedlots	3-Chloro-p-toluidine hydrochloride
062719–00200	B and G Dursban 2E Insecticide	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. 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 VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000016	Dragon Corp., Box 7311, Roanoke, VA 24019.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
002792	Elf Atochem N.A. Inc., Decco Division, 1713 S. California Ave, Monrovia, CA 91017.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
052200	Tyler Enterprises Inc., Rt. 53 South Box 365, Elwood, IL 60421.
055392	Manna Pro Corp., 7711 Carondelet Ave, Ste 800, St Louis, MO 63105.
056228	U.S. Department of Agriculture, Animal & Plant Health Inspection Service, 4700 River Rd., Unit 152, Riverdale, MD 20737.
062719	DowElanco, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 25, 1997. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 11, 1997.

Linda A. Travers,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 97–4775 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–713; FRL–5589–2]

Bayer Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a regulation for residues of imidacloprid in or on cereal grain, sweet corn, safflower and soybeans. The notice contains a summary of the petition prepared by the petitioner, Bayer Corporation.

DATES: Comments, identified by the docket number [PF–713], must be received on or before March 28, 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 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–713]. Electronic comments on this notice 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 notice 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 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 6F4765 pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 346a(d), by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170, 110 Stat. 1489) from Bayer Corporation (''Bayer''), 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120–0013 proposing to amend 40 CFR 180.472 by establishing tolerances for inadvertent or indirect residues of the insecticide, imidacloprid: 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloro-pyridinyl moiety in or on cereal grain [grain 0.05 parts per million (ppm), forage (2.0 ppm), stover (0.3 ppm), hay (6.0 ppm), and straw (3.0 ppm)], sweet corn (0.05 ppm), legume vegetables (0.3 ppm) [and foliage thereof (2.5 ppm)], and safflower seed (0.05 ppm). The nature of the imidacloprid residue in plants and livestock is adequately understood. The analytical method for determining residues is a common moiety method for imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety using oxidation, derivatization, and analysis by capillary gas chromatography with a mass-selective detector. These tolerances would allow for a 1–month plant back interval for these crops following normal application of imidacloprid-containing products.

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 FQPA, Bayer Corporation 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 Bayer Corporation; 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 may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

Imidacloprid is a broad-spectrum insecticide with excellent systemic and contact toxicity characteristics which is used primarily for sucking insects.

A. Plant Metabolism and Analytical Method

The metabolism of imidacloprid in plants is adequately understood for the purposes of these tolerances. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and HPLC-UV which has been validated by the EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

B. Magnitude of the Residue

Field rotational crop studies were conducted in three states where soil was treated with imidacloprid at a rate of 0.3 lbs active ingredient per acre (ai/A) (1x). After 30 days, rotational crops were planted, grown to maturity, and harvested at appropriate times. Residue levels in cereal grain, sweet corn (K+CWHR), and safflower seed were <0.05 ppm. Maximum residues were 1.81 ppm in cereal grain forage, 0.26 ppm in cereal grain stover, 2.7 ppm in cereal grain straw, 0.22 ppm in legume vegetables, and 2.33 ppm in legume vegetable foliage. These residue data support tolerances of 0.05 ppm for cereal grain, sweet corn (K+CWHR), and safflower seed; 2.0 ppm for cereal grain forage; 0.3 ppm for cereal grain stover; 6.0 ppm for cereal grain hay; 3.0 ppm in cereal grain straw; 0.3 ppm in legume vegetables; and 2.5 ppm for the foliage of legume vegetables. No processing studies were submitted with this petition, however, available data would indicate that tolerances on corn meal (0.05 ppm), soybean meal (0.5 ppm) and a time-limited tolerance on safflower meal (0.5 ppm) could be considered. The registrant has committed to provide data to support these processed commodities. CBTS has concluded that existing poultry meat and egg tolerances are adequate to support the proposed new uses of imidacloprid.

C. Toxicological Profile of Imidacloprid

1. *Acute toxicity.* The acute oral LD_{50} values for imidacloprid technical ranged from 424 to 475 milligrams per kilogram of body weight (mg/kg bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 milligrams per kilogram (mg/kg) in rats. The 4–hour rat inhalation LC_{50} was >69 milligrams per cubic meter (mg/m^3) air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicity.* Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity.* A two-generation rat reproduction study gave a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity.* Ninety-day (90–day) feeding studies were conducted in rats and dogs. The NOEL's for these tests were 14 mg/kg bwt/day (150 ppm) and 5 mg/kg bwt/day (200 ppm) for the rat and dog studies respectively.

5. *Chronic toxicity/oncogenicity.* A 2–year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

Imidacloprid has been classified under ''Group E'' (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical. The reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100–fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7% of the RfD.

6. *Endocrine effects.* The toxicology database for imidacloprid is current and complete. Studies in this database include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. These studies revealed no primary endocrine effects due to imidacloprid.

7. *Mode of action.* Imidacloprid exhibits a mode of action different from traditional organophosphate, carbamate, or pyrethroid insecticides. Imidacloprid acts by binding to the nicotinergic receptor sites at the postsynaptic membrane of the insect nerve. Due to this novel mode of action, imidacloprid has not shown any cross resistance to registered alternative insecticides and is a valuable tool for use in IPM or resistance management programs.

D. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with excellent systemic and contact toxicity characteristics with both food and non-food uses. Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control. Those potential exposures are addressed below:

1. *Dietary.* The EPA has determined that the reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100–fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. As published in the Federal Register of December 13, 1995 (60 FR 64006)(FRL–4990–5) and June 12, 1996 Federal Register (61 FR 2674)(FRL–5367–8) (petition to establish tolerances on leafy green vegetables (PP 5F4522/R2237)), the TMRC from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7% of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (< 1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1% of the RfD. Therefore, Bayer believes that dietary exposure from the existing uses including the currently proposed inadvertent or indirect residue tolerances will not exceed the RfD for

any subpopulation (including infants and children).

2. *Water.* Although the various imidacloprid labels contain a statement that this chemical demonstrates the properties associated with chemicals detected in groundwater, Bayer is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the United States. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. In addition, groundwater monitoring studies are currently underway in California and Michigan. Therefore, Bayer believes that contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

3. *Non-occupational*— a. *Residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 to 41,546 for 10–year–old children and 6,859 to 45,249 for 5–year–old children were estimated by comparing dermal exposure doses to the imidacloprid no observable effect level of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year–old children ranged from 5.6 to 38.2 g/cm^2 and for 5–year–old children from 5.1 to 33.5 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

b. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch's (OREB) and Bayer. Data indicate that the Margins of Safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^7 and 2.4×10^8, respectively—and exposure can thus be considered negligible.

c. *Tobacco smoke.* Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2 percent of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

d. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's OREB who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

4. *Cumulative effects.* No other chemicals having the same mechanism of toxicity are currently registered, therefore, Bayer believes that there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

E. Safety Determinations

1. *U.S. population in general.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, Bayer concludes that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 15% of the RfD for the U.S. population. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a two-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development . The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post- natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post-natal effects is complete. Further for imidacloprid, the NOEL of 5.7 mg/kg/bwt from the 2–year rat feeding/carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100–fold uncertainty factor is already used to calculate the RfD, Bayer surmises that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, EPA has concluded that the TMRC from use of imidacloprid from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7% of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (< 1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1% of the RfD. Therefore, Bayer concludes that dietary exposure from the existing uses including the currently proposed tolerances will not exceed the RfD for any subpopulation (including infants and children).

F. Other Considerations

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. There is an additional confirmatory method available. Imidacloprid and its metabolites have been shown to be stable for at least 24 months in frozen storage.

G. International Tolerances

No CODEX Maximum Residue Levels (MRL's) have been established for residues of Imidacloprid on any crops at this time.

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–713].

A record has been established for this notice under docket numbers [PF–713] (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 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 Virginia 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 record keeping requirements.

Dated: February 10, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4627 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–706; FRL–5585–7]

Bioxy, Inc.; 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 exemption from the requirement of a tolerance for sodium chlorite residues in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry when applied as a bactericide for the generation of chlorine dioxide in livestock drinking water.

DATES: Comments, identified by the docket control number PF–706, must be received on or before, March 28, 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 22202.

Comments and data may also be submitted electronically be 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 docket control number PF–706. Electronic comments on this notice 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 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Vivian A. Turner, Acting Product Manager (PM) 32, Registration Division (7505C), Rm., 237, Crystal Mall #2, Jefferson Davis Highway, Arlington, VA. 703–305–7460. e-mail: turner.vivian@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4783) from Bioxy, Inc. proposing, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, (FFDCA) 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from tolerance for residues of sodium chlorite and its hydrolysis by-product, chlorine dioxide, in or on meat and meat byproducts of cattle, sheep, goats, horses and poultry when such residues result from the use of sodium chlorite to generate the bactericide, chlorine dioxide, in poultry drinking water and livestock drinking water at a concentration of up to 18.34 parts per million (ppm). The proposed analytical method is ultraviolet spectrophotometric analysis. Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, Bioxy, Inc. has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Bioxy, Inc. and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Petition Summary

This section has been arranged to provide a justification for this tolerance exemption and a summary of available data.

The request is to exempt from the requirement of a tolerance, residues of sodium chlorite and its hydrolysis product, chlorine dioxide, in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, and milk and eggs when such residues result from the use sodium chlorite to generate the bactericide, chlorine dioxide in poultry drinking water and livestock drinking water.

EPA has exempted sodium chlorite from the requirement of a tolerance when used as a seed-soak treatment of the raw agricultural commodities (RACs) crop group Brassica (cole) leafy vegetables and radishes (40 CFR 180.170). Sodium chlorate is chemically similar to sodium chlorite, and sodium chlorate is exempt from the requirement of a tolerance when used as a defoliant, desiccant, or fungicide on various RACs (40 CFR 180.1020). Chlorine gas is exempted from the requirement of a tolerance when used pre- or post-harvest in solution on all RACs (40 CFR 180.1095). Calcium hypochlorite is exempted from the requirement of a tolerance when used harvest or postharvest on all RACs and in or on grapes when used as a fumigant

postharvest by means of a chlorine generator pad (40 CFR 180.1054). The Agency has determined previously (as stated in the proposal for exemption from the requirement of a tolerance for calcium hypochlorite chlorine gas in the Federal Register of January 11, 1991 (56 FR 1153; FRL–3686–5), that there is no reasonable expectation that residues of these compounds will remain in eggs, meat, milk or poultry in accordance with 40 CFR 180.3. The residues which do remain are not of toxicological significance.

A. Residue Chemistry

Residues of sodium chlorite are not expected in livestock because it converts to chlorine dioxide in the drinking water and is consumed by biological activity. Because sodium chlorite is highly reactive with minerals, bacteria and other contaminants, the reaction is complete within a few minutes consuming most, if not all of the sodium chlorite.

Because there are many active Federal pesticide registrations for sodium chlorite and chlorine dioxide as well as existing tolerance exemptions for both compounds, the Agency has determined that the residue chemistry for these compounds is understood.

Adequate analytical methodology is available through spectrophotometric analysis to determine the amounts of sodium chlorite in livestock drinking water.

B. Toxicological Profile

The acute and chronic toxicity of sodium chlorite and chlorine dioxide have been tested extensively. Adverse effects are not expected when used in the proposed manner.

C. Aggregate Exposure

There are no established U.S. tolerances for sodium chlorite or chlorine dioxide; however, there are several tolerance exemptions for theses compounds. The addition to aggregate exposure or sodium chlorite or chlorine dioxide as described in this petition is minimal.

The estimated non-occupational exposure to sodium chlorite and chlorine dioxide has been evaluated based on its proposed use pattern. The potential for non-occupational exposure under the proposed use to the general population is unlikely. Sodium chlorite and its hydrolysis product, chlorine dioxide, is proposed to be used only on poultry and livestock farms and is not to be used in or around the home.

There is no maximum contaminant level for residues of sodium chlorite in drinking water; however, there is a proposed maximum residual disinfectant level (MRDL) for chlorine dioxide of 0.8 milligrams per liter (mg/L) and a MRDL goal of 0.3 mg/L. The MRDL was part of a proposed EPA rulemaking on disinfectants on drinking water on July 29, 1994; however, this rule is not yet finalized.

D. Cumulative Effects

Sodium chlorate is chemically similar to sodium chlorite, and sodium chlorate is exempt from the requirements of a tolerance when used as a defoliant, desiccant, or fungicide on various RACs (40 CFR 180.1020). Chlorine gas is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all RACs (40 CFR 180.1095). Calcium hypochlorite is exempted from the requirement of a tolerance when used preharvest or postharvest on all RACs and in or on grapes when used as a fumigant postharvest by means of a chlorine generator pad (40 CFR 180.1054). The agency has determined previously that there is no reasonable expectation that residues of these compounds will remain in eggs, meat, or poultry in accordance with 40 CFR 180.3. The residues which do remain are not of toxicological significance.

E. Safety Determination

Because sodium chlorite and chlorine dioxide are not expected to accumulate in poultry or livestock tissues and their food byproducts, exposure to the U.S. population and the subgroup infants and children does not pose a significant risk. In addition, chlorine dioxide (the byproduct from the reaction during the proposed use of sodium chlorite) is already present in many municipal drinking water systems, therefore, the exposure to any chlorine dioxide that may be present in animal food products as a result of the proposed use is not expected to cause any additional risk to the general population and the subgroup of infants and children.

F. International Tolerances

The petitioner understands that there are no current established Maximum Residue Levels for sodium chlorite or chlorine dioxide.

II. Public Record

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the docket control number, PF–706.

A record has been established for this notice under docket control number PF–706 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 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 Virginia 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: February 13, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office Pesticide Programs.

[FR Doc. 97–4626 Filed 2–25–97; 8:45 am]
BILLING CODE 6560–50–F

[PF–711; FRL–5589–1]

Good Bugs Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a regulation for an exemption from the requirement of a tolerance for residues of the microbial pesticide *Pseudomonas fluorescens* PRA-25 in or on peas, snapbeans, sweet corn, and supersweet

corn. The summary of the petition published in this notice was proposed by the petitioner Good Bugs Inc.

DATES: Comments, identified by the docket number [PF-711], must be received on or before, March 28, 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 docket number [PF-711]. Electronic comments on this notice 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 a comment 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 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Teung F. Chin, Regulatory Action Leader, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor CS #1, 2800 Crystal Drive, Arlington, VA, 703–308–1259, e-mail: chin.teung@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 7G4803) from Good Bugs, Inc., P.O. Box 939, New Glarus, WI 53574, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the microbial pesticide, *Pseudomonas fluorescens* PRA-25 in or on the raw agricultural commodities peas, snap beans, sweet corn and supersweet corn.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Good Bugs, Inc. has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Good Bugs, Inc. and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

I. Petition Summary

A. Proposed Use Practices

Seed treatment with *Pseudomonas fluorescens* PRA-25 will be at the rate of 2 oz. per 100 lbs. of seed for snap beans, 3 oz. per 100 lbs of seed for peas and snap beans and 4.5 oz. per 100 lbs. of seed for supersweet corn. Application is one time only, prior to planting. In Wisconsin, 5 acres of peas will be treated in 1997, 50 acres in 1998 and 200 acres in 1999, 5 acres of snap beans will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of sweet corn will be treated in 1997, 50 in 1998, and 200 in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Minnesota, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of snap beans will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Illinois, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of sweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999; 5 acres of supersweet corn will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. In Washington, 5 acres of peas will be treated in 1997, 50 acres in 1998, and 200 acres in 1999. The product is to be applied to the seeds in the planter box immediately before planting.

B. Product Identity/Chemistry

1. *Pseudomonas fluorescens* PRA-25 was originally isolated from the rhizosphere of a pea plant in Wisconsin. Strain PRA-25 is a gram negative, rod shaped, aerobic, non spore forming bacterium. A fluorescent pigment (pyroverdin) is produced on King's Medium B. The strain was identified as a member of the *Pseudomonas fluorescens*/*putida* group using gas chromatography fatty acid (GC-FAME) analysis. GC-FAME and Biolog analysis was used to identify strain PRA-25 as *Pseudomonas fluorescens* (Trevisan)Migula Biotype B (=biovar II). Biovar II includes *Pseudomonas marginalis* pathogens as well as saprophytes (Bergey's Manual), so a potato rot assay was conducted. The known soft-rot pathogen *Erwinia* carotovora was included as a check treatment. Strain PRA-25 did not rot potatoes. Good Bugs, Inc. concludes that *Pseudomonas fluorescens* PRA-25 is a saprophytic member of *Pseudomonas fluorescens* biovar II.

2. *Pseudomonas fluorescens* PRA-25 will be used as a seed treatment and does not grow systemically in the plant. Good Bugs does not anticipate residues at the time of harvest. Good Bugs, Inc., therefore, believes a method to determine residues is not necessary.

3. An analytical method for detecting and measuring the levels of *Pseudomonas fluorescens* PRA-25 is not needed because the use as a seed treatment will not leave residues on the harvested crop. *Pseudomonas fluorescens* is a common contaminant of raw and refrigerated milk, meat, fish, and cheese. All biovars of *Pseudomonas fluorescens* appear to be readily isolated from foodstuff.

C. Mammalian Toxicological Profile

Good Bugs, Inc. states that the Acute Oral Limit Toxicity Testing of *Pseudomonas fluorescens* PRA-25 showed no evidence of toxicity or pathogenicity in rats dosed once by oral gavage with strain PRA-25. Normal weight gains were observed in all test animals during the observation period. No lesions were observed in any test animal.

Waivers for genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity are requested. This testing is not generally required for microbial pesticides and Good Bugs, Inc. believes that the lack of toxicity along with the lack of exposure does not warrant such testing.

D. Aggregate Exposure

1. *Dietary exposure. Pseudomonas fluorescens* is a ubiquitous bacterium that is commonly associated with soil, water, plant roots and leaves, meat, fish, and dairy products. Good Bugs, Inc. believes that no additional exposure to

food or drinking water is anticipated by using *Pseudomonas fluorescens* PRA-25 as a seed treatment.

2. Non-dietary exposure such as lawn care, topical insect repellents, etc. is not anticipated since this microbial pesticide does not have these uses.

3. Occupational exposure will be mitigated through the use of proper personal protective equipment.

E. Cumulative Exposure

Biological control agents of this type generally work by out competing disease organisms, thus, not having a toxic mode of action that can be shared. Other exposure can occur since other strains of *Pseudomonas fluorescens* are registered as microbial pesticides. Good Bugs, Inc. believes that human exposure from use of *Pseudomonas fluorescens* PRA-25 as a seed treatment is expected to be negligible.

F. Safety Determination

Good Bugs, Inc. believes that the safety of the U.S. population and that of infants and children will not be adversely affected by the use of *Pseudomonas cepacia* PRA-25 as a vegetable seed treatment. Strain PRA-25 is a naturally occurring strain originally isolated from the rhizosphere of a pea.

G. Existing Tolerances

1. Tolerance exemptions have been granted for other strains of *Pseudomonas fluorescens*.

2. International tolerance exemptions have been granted for other strains of Pseudomonas fluorescens.

II. Public Record

Interested persons are invited to submit comments on the notice of filing. Comments must bear a notation indicating the document control number, [PF-711].

A record has been established for this notice under docket number [PF-711] 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 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.

List of subjects

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

Dated: February 11, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–4630 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–701; FRL–5585–2]

Rhone-Poulenc Ag 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 the establishment of a tolerance for residues of isoxaflutole in or on field corn. This notice contains a summary of the petition prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket control number [PF–701], must be received on or before, March 28, 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 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 in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–701]. Electronic comments on this notice 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 a 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 p.m., Monday through Friday, excluding legal holidays.

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

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4664) from Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for the combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl) isoxazole] and its metabolites 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropylpropan-1,3-dione and 2-methylsulphonyl-4-trifluoromethyl benzoic acid, calculated as the parent compound, in or on the raw agricultural commodity field corn at 0.20 parts per million (ppm), field corn, fodder, at 0.50 ppm, field corn, forage at 1.0 ppm; and

establishing a tolerance for combined residues of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethyl benzoyl)isoxazole] and its metabolite 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropylpropan-1,3-dione, calculated as the parent compound, in or on the liver of cattle, goat, hogs, horses, poultry and sheep at 0.40 ppm, meat byproducts (except liver) of cattle, goat, hogs, horses, and sheep at 0.2 ppm and milk at 0.02 ppm. The proposed analytical method is gas chromatography. 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 petitions. Additional data may be needed before EPA rules on the petitions.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Rhone-Poulenc 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 Rhone-Poulenc; 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 may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Isoxaflutole Uses

Isoxaflutole is the first compound in a new class of isoxazole herbicides. Weeds found resistant to other herbicides are not cross resistant to isoxaflutole. The unique mode of action, which disrupts pigment biosynthesis in susceptible plants, of isoxaflutole provides excellent selective control for a wide spectrum of grass and broadleaf weeds at low use rates.

Isoxaflutole will be used on field corn to control broadleafs (including Kochia, lambsquarters, mallow, mustard, nightshade, pigweed, ragweed, smartweed, velvetleaf, and waterhemp); grasses (including barnyardgrass, cupgrass, foxtails, Panicum and wild proso millet).

Isoxaflutole will be applied in either conventional, conservation tillage, or no-till crop management systems and may be applied either pre-plant, pre-plant incorporated or preemergence for use in field corn production. The product controls emerging weeds and also has postemergent burn-down activity to small exposed weeds. Application rates for isoxaflutole alone range from 0.035 to 0.14 pounds active ingredient per acre dependent on soil texture. Combinations of isoxaflutole with up to one-half rates of other herbicides improves control of several annual grasses and dramatically reduces total herbicide volume usage in comparison with current agronomic practices. Applications can be made up to 14 days before planting field corn in either conventional or no-till situations. Isoxaflutole is formulated as a 75 percent water dispersible granule and will be marketed under the trade name of ''BALANCE''.

B. Isoxaflutole Safety

Rhone-Poulenc Ag Company has submitted 41 separate toxicology studies in support of tolerances for isoxaflutole. According to Rhone-Poulenc, isoxaflutole is not acutely toxic and produces minimal skin and eye irritation. Further, isoxaflutole is not genotoxic, teratogenic nor a reproductive toxin.

The following mammalian toxicity studies have been conducted to support the tolerance of isoxaflutole:

A rat acute oral study with an LD_{50} of greater than 5,000 milligrams/kilogram (mg/kg).

A rabbit acute dermal LD_{50} of greater than 2,000 mg/kg.

A rat acute inhalation of LC_{50} of greater than 5.23 milligram/litre (mg/L).

A primary eye irritation study in the rabbit which showed minimal irritation.

A primary dermal irritation study in the rabbit which showed minimal irritation.

A primary dermal sensitization study in the guinea pig which showed no sensitization.

An acute neurotoxicity study conducted in rats administered a single dose at 0, 125, 500 or 2,000 mg/kg with a no observed effect level (NOEL) of 2,000 mg/kg (limit dose) and no treatment-related effects at any dose.

A 90–day subchronic neurotoxicity study in rats administered at dose levels of 0, 25, 250 or 750 milligrams/kilogram of body weight per day (mg/kg bwt/day) with NOEL of 750 mg/kg/day. This dose is also the Lowest Effect Level (LEL) for non-neurotoxic effects based on a significant decrease in mean body weight gain.

A 12–month feeding study in dogs administered at levels of 0, 240, 1,200, 12,000 or 30,000 ppm with NOEL of 1,200 ppm based on slight changes in liver and kidney weights in the absence of any associated histopathological changes.

A 24–month chronic feeding/oncogenicity study in rats administered at levels of 0.5, 2, 20 or 500 mg/kg bwt/day) with an overall NOEL of 2.0 mg/kg/day based on non-neoplastic changes in the cornea, sciatic nerve, thigh muscle, thyroid and liver observed at 20 mg/kg/day. An increased incidence of hepatocellular adenomas and carcinomas was observed at 500 mg/kg bwt/day for males and females. In addition, most of the 500 mg/kg/day males with liver tumors also had follicular cell adenomas in the thyroid.

An oncogenicity study in mice administered 0, 25, 500 and 7,000 ppm with a NOEL of 25 ppm based on a slight effect on liver weight and body weight gain at the LEL of 500 ppm. An increased incidence of hepatocellular adenomas and carcinomas was observed at 7,000 ppm in both sexes. Increased liver weight, non-neoplastic cellular changes in the liver, and amyloidosis in the duodenum, ileum, jejunum, kidneys, heart ventricle, mesenteric lymph node, and thyroid were also observed at 7,000 ppm.

A developmental toxicity study in rats administered at doses of 0, 10, 100 or 500 mg/kg bwt/day on gestation days 6 through 15 with a maternal NOEL of 100 mg/kg/day based on salivation and lower body weight, body weight gain and food consumption observed at 500 mg/kg/day and a fetal NOEL of 10 mg/kg/day based on growth retardation and increased incidences of vertebral and rib anomalies and subcutaneous edema observed at 100 mg/kg/day.

A developmental toxicity study in rabbits administered at levels of 0, 5, 20 or 100 mg/kg bwt/day on gestation days 6 through 19 with a maternal NOEL of 20 mg/kg/day based on no weight gain and decreased food consumption observed at 100 mg/kg/day and fetal NOEL of 5 mg/kg/day based on growth retardation and increased incidences of rib and vertebral anomalies noted at 20 mg/kg/day.

A 2 generation reproduction study in rats fed at dose levels of 0, 0.5, 2, 20 or 500 mg/kg bwt/day with a NOEL for postnatal development and parental toxicity of 2 mg/kg/day based on increased liver weight and hepatocellular hypertrophy in F0 and F1 adults and a slightly lower viability index for F1 pups at 20 mg/kg/day. No adverse effects on mating or fertility indices and gestation, live birth or weaning indices were noted in any generation.

Mutagenicity—Ames Assay. Negative with and without metabolic activation.

Mouse lymphoma. Negative with and without metabolic activation.

In-vivo Mouse Micronucleus Assay. Negative.

In-vitro Cytogenetics Human Lymphocyte Assay. Negative in the presence and absence of metabolic activation.

A metabolism study in the rat which demonstrates that the majority of the total radioactivity (TRR) is excreted within 24 to 48 hours through the urine and feces. Isoxaflutole is metabolized primarily via hydrolysis to the 1-(2-methylsulfonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropylpropan-1,3-dione (RPA 202248) followed by either reduction of the cyanonitrile group to form RPA 205834 or further hydrolysis to 2-methylsulphonyl-4-trifluoromethyl benzoic acid (RPA 203328). The RPA 202248 is the major metabolite excreted while RPA 203328 is the most polar. Thus, the acute oral toxicity and mutagenic potential of these two metabolites were assessed.

In the acute oral toxicity studies, RPA 203328 had an oral LD_{50} greater than 5,000 mg/kg while RPA 202248 had an oral LD_{50} greater than 2,000 mg/kg in fasted rats. At 5,000 mg/kg, RPA 202248 produced 40 percent mortality in both male and female rats. In Ames assays, both RPA 202248 and RPA 203328 were found to be devoid of mutagenic activity in the absence and presence of metabolic activation.

In the 28-day rat study, RPA 203328 was administered continuously in the diet at levels of 0, 150, 500, 5,000, and 15,000 ppm (10 rats/sex/group). No mortalities or treatment-related clinical signs were observed during the study. No effects were observed on body weight, food consumption, hematology, clinical chemistry, urinalysis, or ophthalmoscopy. Further, no changes in organ weight or histopathology were noted at any level. The NOEL of 15,000 ppm is equivalent to 1,120 mg/kg/day in males and 1,270 mg/kg/day in females.

C. Chronic Dietary Effects

Based upon all available data, the lowest NOEL of 2.0 mg/kg/day was observed in the chronic rat study. Using this NOEL and a safety factor of 100, a theoretical Reference Dose (RfD) of 0.02 mg/kg/day is obtained. The only pending registration for isoxaflutole is for use in/on field corn. A chronic dietary risk assessment using the maximum residue limits proposed in this petition, and a 100 percent crop treated shows that this use represents 1.8, 4.8, 5.3, and 3.3 percent of the RfD for the whole U.S. population, for non-nursing infants less than 1 year old, for children aged 1 to 6 years, and for children aged 7 to 12 years, respectively. Realizing that isoxaflutole is likely to achieve only a 25 percent market share at maturity, less than 1.5 percent of the RfD is reached for all segments of the population. Thus, Rhone-Poulenc believes that the anticipated dietary exposure to isoxaflutole is well below the theoretical RfD of 0.02 mg/kg/day and is negligible for all segments of the population including infants and children.

Isoxaflutole presents a minimal acute hazard. The acute oral NOEL is at least 1,000–fold higher than lowest chronic NOEL of 2 mg/kg/day indicating that acute exposure is unlikely to constitute any significant dietary risk. Further, as field corn is generally not directly consumed, no significant acute dietary exposure is likely to occur.

D. Aggregate Exposure

The FQPA of 1996 lists three other potential sources of exposure to the general population that must be addressed. These are pesticides in drinking water, exposure from non-occupational sources, and the potential cumulative effect of pesticides with similar toxicological modes of action. These exposures for isoxaflutole are discussed below.

1. *Drinking water.* There is no established maximum contaminant level (MCL) or health advisory level (HAL) for isoxaflutole nor its primary metabolite, 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione. In the field dissipation study, the half-life for isoxaflutole was up to 3.0 days and for 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione was 16 days under actual field conditions. Residues were only found in the uppermost depths (above 12 inches). Based upon the data generated by this study, isoxaflutole and its primary metabolite have a low potential for reaching groundwater. Under actual use conditions, neither compound is expected to be present at toxicologically significant concentrations in ground water due to the low application rate (maximum use rate 0.14 lbs. per acre) and the low acute toxicity of each compound. Therefore, Rhone-Poulenc does not anticipate the presence of isoxaflutole residues in drinking water.

2. *Non-occupational exposure.* Isoxaflutole is being proposed for use on field corn only at this time. Thus, non-occupational exposure to isoxaflutole via dermal or inhalation routes does not exist and dietary exposure is the only consideration for risk assessment purposes.

3. *Common mechanism of action.* No other pesticides have been identified which inhibit 4-HPPDase. The thyroid and liver tumors observed with isoxaflutole in the rodent studies are most likely indirectly related to a significant induction of the hepatic microsomal enzymes PROD, BROD, and UDPGT. While hepatic microsomal enzyme induction in rodents is likely to be produced by many other pesticides, there is no data to indicate that these effects would be cumulative with any other pesticide. Considering the rapid elimination of isoxaflutole in the animal metabolism study, the effects associated with isoxaflutole are unlikely to be cumulative with any other compound. Further, considering the known sensitivity of the rat to the development of thyroid lesions in response to an imbalance of thyroid hormones and rodents to the development of liver tumors in response to the induction of microsomal enzymes, occurrence of these tumors via these mechanisms in rodent studies have little if any practical relevance for human cancer or risk assessment. Epidemiological studies support the position that neither thyroid tumors observed in rats due to an imbalance of thyroid hormones or liver tumors observed in rodents exposed to inducers of microsomal enzyme activity are likely to occur in humans.

Therefore, only the potential risks associated with exposure to isoxaflutole are considered for this assessment.

E. Determination of Safety for Infants and Children

Developmental toxicity (delayed ossification and rib and vertebral anomalies) were observed in the developmental toxicity studies. The NOELs were 10 mg/kg/day in rats and 5 mg/kg/day in rabbits. In a 2-generation reproduction study, pups from the high dose group of 500 mg/kg/day had significantly lower weights and a slightly lower viability index for both F1 and F2 litters and corneal lesions for F2 litters. Parental systemic toxicity for this dose group consisted of lower weight gain and food consumption, corneal lesions, increased liver weight, and hepatocellular hypertrophy. In addition, a slightly lower viability index was noted for F1 pups from the 20 mg/kg/day dose group but not for F2 pups. Parental systemic toxicity at 20 mg/kg/day included increased liver weight and hepatocellular hypertrophy.

Considering the conservative exposure assumptions in setting the tolerances and the dietary risk assessment assuming 100 percent crop treated, less than 5.5 percent of the RfD is utilized for non-nursing infants,

children 1 to 6 years old, and children 7 to 12 years old. No non-occupational sources of exposure exist for isoxaflutole. Therefore, based upon the completeness and reliability of the toxicity data and the conservative exposure assessment, Rhone-Poulenc believes that there is a reasonable certainty that no harm will result to infants and children from exposure to the residues of isoxaflutole and no additional uncertainty factor is warranted.

F. Estrogenic Effects

No evidence of estrogenic or androgenic effects were noted in any study. No adverse effects on mating or fertility indices and gestation, live birth, or weaning indices were noted in the 2-generation rat reproduction study. An imbalance of thyroid hormones related to the induction of UDPGT was noted in rats. However, considering species differences in the half-life of thyroid hormones in rodent versus primates (12 to 24 hours in rat compared to 5 to 9 days in humans) and differences in the responsiveness of thyroid cells to TSH, thyroid hormone levels in humans are unlikely to be affected by the extremely low levels of isoxaflutole residues that might be present in food. Therefore, Rhone-Poulenc believes that isoxaflutole is not likely to cause any endocrine effects in most species including humans.

G. Chemical Residue

The nature of the residue of isoxaflutole in plants and animals is considered understood. In plants, the metabolism proceeds through the hydrolysis of the isoxazole ring to form the primary degradate, 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione, and further hydrolysis yields the second metabolite, 2-methylsulphonyl-4-trifluromethyl benzoic acid. In animals the metabolic pathway is very similar and the metabolites formed are primarily the 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione with two other toxicologically insignificant minor degradates.

An analytical method is available for detecting and measuring levels of isoxaflutole in field corn with a limit of quantitation of 0.01 ppm. The method involves hydrolysis of isoxaflutole to a methyl ester for gas chromatography analysis.

A total of 32 field corn trials were conducted in 13 different states. The maximum residues were 0.88 ppm in forage, 1.1 ppm in silage, 0.40 ppm in fodder and 0.11 ppm in grain. Based on these data, the proposed tolerance levels are adequate to cover residues likely to be present from the proposed use of isoxaflutole. Isoxaflutole residues do not appear to concentrate in corn processed commodities. Therefore, no food additive tolerances are being proposed for these processed commodities.

In animal feeding studies, quantifiable residues in the cow were observed only in liver (up to 0.8 ppm), kidney (up to 0.2 ppm) and milk (up to 0.03 ppm) at the 46 ppm (10X) dietary burden level. No residues were observed in fat or muscle. In poultry, quantifiable residues were observed only in the liver (up to 0.6 ppm) at the highest dose level of 1.8 ppm (10X dietary burden). No residues of isoxaflutole nor its primary metabolite, 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropane-1,3-dione, were observed in eggs, meat, fat or muscle. Based on these data and the expected (1X) dietary burden in animal feed, the proposed tolerance levels are adequate to cover residues likely to be present in animal tissues resulting from the corn feed items of the animal's diet.

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–701].

A record has been established for this notice under docket control numbers [PF–701] (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 Rm. 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 Virginia address in ''ADDRESSES'' at the beginning of this document.

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

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticide and pest, Reporting and recordkeeping requirements.

Dated: February 11, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4628 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00468; FRL–5587–4]

Pesticide Product Label System; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the new Pesticide Product Label System on CD ROM which supersedes and replaces the Compact Label File on microfiche.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda Alexander, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

ADDRESSES: For specific address and price information, refer to Unit II. of this document.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Pesticide Product Label System (PPLS), a software product developed by EPA's Office of Pesticide Programs (OPP), contains images of registered pesticide product labels submitted by pesticide registrants and accepted by OPP since 1971.

The label images have been indexed by company, product, and date. The retrieval program allows the user to search by registration number, which is a combination of company number and product number. Searches can be conducted based on partial numbers if

the complete number is unknown. Search results are displayed in full screen format and single or multiple pages can be printed.

II. Ordering Information

The CD ROM collection is available as an ongoing subscription from: The National Technical Information Service (NTIS), ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, Telephone: (703) 487-4630. Approximate annual cost for the new base set each year and three quarterly updates is $640; outside U.S., Canada, and Mexico, $1,280. Price for base set of about 25 CDs is $388; outside U.S., Canada, and Mexico $776. Each update includes a new index CD and a labels CD, price is $84 each. When requesting the PPLS from NTIS, use the Order Number PB97-594040.

Dated: February 12, 1997.

Linda A. Travers,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 97–4776 Filed 2–25–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

February 20, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 28, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0035.

Title: Application for Renewal of Auxiliary Broadcast License.

Form No.: FCC 313–R.

Type of Review: Revision of a previously approved collection.

Respondents: Businesses or others for profit.

Number of Respondents: 50.

Estimate Hour Per Response: 30 minutes per response.

Total Annual Burden: 25 hours.

Needs and Uses: FCC 313–R is used by licensees of remote pickup and low power stations that are not broadcast licensees (e.g., cable operators, network entities, international broadcast services, motion picture producers and television producers) to renew their auxiliary broadcast license. Statutory authority for this collection of information is contained in Section 307 of the Communications Act. It is also required by 47 CFR 73.3500 and 73.3539. The Commission intends to revise the application to include a place for the applicant to provide an Internet address and a Taxpayer Identification Number. The Internet address will provide the FCC with another media of contacting the applicant with questions about their application and the Taxpayer Identification Number is required to comply with the Debt Collection Improvement Act of 1996. The anti-drug statement has been added to the items the applicant certifies to when signing the application. The Certificate of Renewal at the bottom of the application has been removed because the Certificate of Renewal is computer generated on laser printer and is no longer needed. The Commission has received OMB approval for electronic filing of the data collected on this form in connection with a generic renewal form for all Wireless Telecommunications Bureau Services, FCC form 900. The burden will be adjusted accordingly once this new form has been implemented and frequency of use has been determined.

As a result of Part 101 becoming effective August 1, 1996, Part 74 licensees (television auxiliary and aural studio link) are no longer required to use this form to renew their licenses. The number of respondents in this category was extremely low and since the estimate of number of respondents can vary in the remaining services, the number of respondents is not being revised. Additionally, the Commission adopted a Report and Order, MM Docket No. 96–90, extending the license terms of all broadcast licenses to 8 years, which will reduce the frequency of filing this information.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–4708 Filed 2–25–97; 8:45 am]

BILLING CODE 6712–01–P

[CC Docket No. 92–237]

FCC Announces North American Numbering Council Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 21, 1997, the Commission released a public notice announcing the March 11 meeting of the North American Numbering Council (NANC) and the Agenda for the meeting. The intended effect of this action is to make the public aware of this meeting of the NANC and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, (202) 418–2330. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, D.C. 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: January 21, 1997.

The North American Numbering Council (NANC) will hold a meeting on Tuesday, March 11, 1997. The meeting will be held at 9:30 A.M. EST at the Federal Communications Commission,

1919 M Street, NW, Room 856, Washington, DC.

This notice of the March 11, 1997 NANC meeting is being published in the Federal Register less than 15 calendar days prior to the meeting due to modifications to the meeting schedule of the NANC. This statement complies with the General Services Administration Management Regulations implementing the Federal Advisory Committee Act. *See* 41 CFR § 101–6.1015(b)(2).

The above meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Linda Simms, at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Agenda

1. Report from NANC Working Groups.
2. Other Business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–4844 Filed 2–25–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Open Meeting of the Board

TIME AND DATE: 9:00 a.m. Wednesday, March 5, 1997.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Mission Regulation—Proposed Rule.
- Affordable Housing Program Application Approvals.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 97–4864 Filed 2–24–97; 11:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Orion International Freight Forwarders, Inc., 1670 NW 94th Avenue, Miami, FL 33172. Officers: Juan R. Cobo, President; Pedro L. Bocchini, Director.

AAA International Freight Forwarding Group, Inc., 8366 Northwest 66th Street, Miami, FL 33166. Officers: Carlos Mendez, President; Miriam Muniz, Vice President.

Dated: February 20, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–4664 Filed 2–25–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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. 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 21, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Patriot Bank Corp, Pottstown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Patriot Bank, Pottstown, Pennsylvania.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Coal City Corporation, Chicago, Illinois; and Manufacturers National Corporation, Chicago, Illinois, to acquire U.S. Bancorp, Inc., Lansing, Illinois, and thereby acquire U.S. Bank, Lansing, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Community Financial Corp., Olney, Illinois; to acquire 100 percent of the voting shares of American Bancshares, Inc., Highland, Illinois; and thereby indirectly acquire American Bank of Illinois in Highland, Highland, Illinois.

Board of Governors of the Federal Reserve System, February 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4699 Filed 2-25-97; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities

or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice 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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Pinnacle Financial Services, Inc., St. Joseph, Michigan; to acquire Indiana Federal Corporation, Valparaiso, Indiana, and thereby indirectly acquire 100 percent of the voting shares of Indiana Federal Bank for Savings, Valparaiso, Indiana, and thereby operate a savings association, pursuant to § 225.25(b)(9); 100 percent of the voting shares of IndFed Mortgage Company, Valparaiso, Indiana, and thereby engage in community development activities, pursuant to § 225.25(b)(6); 100 percent of the voting shares of IFB Investment Services, Inc., Valparaiso, Indiana, and thereby act as investment or financial advisor, pursuant to § 225.25(b)(4), and provide securities brokerage services, pursuant to § 225.25(b)(15); and 33.33 percent of Forrest Holdings, Inc., and its wholly owned subsidiary, Forrest Financial Corporation, both of Lisle, Illinois, and thereby engage in leasing, pursuant to § 225.25(b)(5).

Board of Governors of the Federal Reserve System, February 20, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–4698 Filed 2-25-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC), Genetics Subcommittee

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of the third meeting of the subcommittee on genetics of the National Bioethics Advisory Commission. The subcommittee members will continue addressing issues on genetics. The meeting is open to the public and opportunities for statements by the public will be provided.

DATE: Wednesday, March 5, 1997, 8:00 a.m. to 4:00 p.m.

LOCATION: The subcommittee will meet at the National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conference Room 6, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications.

Tentative Agenda

The subcommittee will continue discussion of tissue sampling. Discussions will include what tissue samples are; how they are collected and stored; the decisions involved in donation; differences in beliefs and attitudes; international concerns; and other related issues.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact the Deputy Executive Director of the NBAC by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the subcommittee will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned on a first come first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 20, 1997.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97–4692 Filed 2–25–97; 8:45 am]

BILLING CODE 4160–17–P

Administration for Children and Families

Office of Community Services; Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K, Chapter K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KG, The Office of Community Services (OCS) (56 FR 42342) as last amended, August 27, 1991. This reorganization will establish a Division of Tribal Services in the Office of Community Services. Amend Chapter KG as follows:

1. KG.00 Mission. Delete this section in its entirety and replace with the following:

KG.00 Mission. The Office of Community Services (OCS) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to community programs to promote economic self-sufficiency. The Office is responsible for administering programs that serve low-income and needy individuals and address the overall goal of personal responsibility and achieving and maintaining self-sufficiency. It administers the Community Services Block Grant, Social Services Block Grant, and the Low Income Home Energy Assistance Block Grant programs. The Office administers the Family Violence Program. It administers a variety of discretionary grant programs that foster family stability, economic security, responsibility and self-support, promote and provide services to homeless and low-income individuals,

and develop new and innovative approaches to reduce welfare dependency, as well as the Tribal Temporary Assistance for Needy Families (TANF) and Job Opportunities and Basic Skills Training (JOBS) programs.

2. KG.10 Organization. Delete this section in its entirety and replace it with the following:

KG.10 Organization. The Office of Community Services is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KGA)

Division of State Assistance (KGB)

Division of Community Discretionary Programs (KGC)

Division of Community Demonstration Programs (KGD)

Division of Energy Assistance (KGE)

Division of Tribal Services (KGF)

3. KG.20 Functions. Add the following Paragraph F:

F. Division of Tribal Services is responsible for assisting in implementation and coordination of ongoing consultation with tribal governments and, where appropriate, state and federal agencies regarding issues relating to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104–193 (the Act) and related legislation. It is also responsible for development of regulations and guidelines and for providing leadership, policy direction, technical assistance and coordination of tribal services programs. Performs inter and intra-agency liaison functions in all areas such as Child Support Enforcement, Child Care, Child Welfare, Foster Care, Low Income Home Energy Assistance, and Family Violence to promote family stability, economic security, responsibility and self-support for Native Americans. It is responsible for conducting program reviews to ensure compliance with the Act, regulations and policy directives. It is responsible for activities related to tribal data collection reporting requirements relating to the programs.

Dated: February 21, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

[FR Doc. 97–4758 Filed 2–25–97; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

Product, Establishment, and Biologics License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the meeting of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's), establishment license applications (ELA's), and biologics license applications (BLA's). CBER's RTF oversight committee examines all RTF decisions that occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The meeting will be held on April 8, 1997.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee continues CBER's effort to promote the timely, efficient, and consistent review of PLA's, ELA's, and BLA's.

FDA regulations on filing PLA's, ELA's, and BLA's are found in 21 CFR 601.2 and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings will ordinarily be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions. If there are no RTF decisions to review, however, the meeting may be cancelled. Publication of any meeting cancellation will be made only as time permits.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all such confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division within CBER will notify the sponsor.

Dated: February 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–4731 Filed 2–25–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA–855]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals 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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Provider/Supplier Enrollment Application; *Form No.:* HCFA–855; *Use:* This information is needed to enroll providers/suppliers by identifying them, verifying their qualifications and eligibility to participate in Medicare, and to price and pay their claims; *Frequency:* Other (Initial Application/recertification); *Affected Public:* Business or other for profit, not for profit institutions, and federal government; *Number of Respondents:* 165,000; *Total Annual Responses:* 165,000; *Total Annual Hours:* 370,000.

To obtain copies of 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 should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 21, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–4759 Filed 2–25–97; 8:45 am]

BILLING CODE 4126–03–P

National Institutes of Health

National Cancer Institute and the Food and Drug Administration: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Soluble Tat Peptide Analogs for the Inhibition of HIV Transcription and Viral Replication

AGENCY: National Institutes of Health and the Food and Drug Administration, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) and the Food and Drug Administration (FDA), wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues, seek a company that can collaboratively pursue the pre-clinical and clinical development of Soluble Tat Peptide Analogs for the Inhibition of HIV Transcription and Viral Replication. The National Cancer Institute, Laboratory of Molecular Virology (LMV) and the Food and Drug Administration, Center for Biologics, Laboratory of Immunochemistry, have established that particular Soluble Tat Peptide Analogs can inhibit the transcription and replication of the Human Immunodeficiency Virus in vitro. The selected sponsor will be selected as a CRADA partner for the co-development of this agent with the National Cancer Institute and the Food and Drug Administration for the co-development of this agent with the NCI and with the FDA, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues.

ADDRESSES: Questions about this opportunity may be addressed to Jeremy A. Cubert, M.S., J.D., Office of Technology Development, NCI, 6120 Executive Blvd. MSC 7182, Bethesda, MD 20892–7182, Phone: (301) 496–0477, Facsimile: (301) 402–2117, from whom further information may be obtained. The Government has filed a patent application related to this CRADA opportunity. For further information on licensing this patent application (DHHS ref. no. E–059–96/0) contact Cindy Fuchs, J.D., NIH Office of Technology Transfer, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, Phone: (301) 496–7735 (ext. 232); Facsimile: (301) 402–0220.

DATES: In view of the important priority of developing new agents for the treatment of infectious disease and related malignancies, interested parties should notify this office in writing no later than April 28, 1997. Respondents will then be provided an additional 30 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: ''Cooperative Research and Development Agreement'' or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and amendments (including 104 P.L. 133) and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of agents in which the Government has taken an active role in developing (37 CFR 404.8), can further develop the subject compounds through Federal Food and Drug Administration approval and to a commercially available status to meet the needs of the public and with the best terms for the Government. The government has applied for a patent application directed to Inhibition of HIV Transcription and Viral Replication Using Soluble Tat Peptide Analogs. Licenses to intellectual property rights related to this opportunity are available from the National Institutes of Health, Office of Technology Transfer and may be necessary to continue development of the technology.

The tat gene encodes an 86 amino acid protein with a number of identified domains including an N-terminus, a cysteine rich, a core domain and a basic domain. Tat, through the core region, has been shown to interact with and stabilize the TFIID basal transcription factor and TFIIA preinitiation complex. Mutations within the core domain of Tat significantly decrease both gene expression and viral replication. National Cancer Institute (''NCI'') and Food and Drug Administration (''FDA'') studies have been directed at synthesis of Tat peptide analogs to compete with wild-type Tat in vivo. The NCI and FDA synthesized soluble peptide analogs of the HIV–1 Tat protein. These peptide analogs inhibit transactivation of HIV, viral replication and formation of viral particles. The peptide analogs compete with Tat in down-regulating Tat transactivation and induce a ninety percent reduction of viral particles from infected cells in vitro. The inhibitory peptide analogs are not toxic in vitro.

The Laboratory of Molecular Virology, Division of Basic Sciences, NCI and the Laboratory of Immunochemistry, Division of Transfusion and Transmitted Diseases, FDA are interested in establishing a CRADA with a company to assist in the continuing development of these peptide analogs, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues. The Government will provide all available expertise and information to date and will jointly pursue pre-clinical and clinical studies as required, giving the company full access to existing data and data developed pursuant to CRADA. The successful company will provide the necessary scientific, financial and organizational support to establish clinical efficacy and possible commercial status of the subject compounds.

The expected duration of the CRADA will be two (2) to five (5) years.

The role of the National Cancer Institute and Food and Drug

Administration, wherein the participation of the FDA is contingent on resolution of any apparent conflict of interest issues, includes the following:

1. Determine the stability, half-life, and distribution of the Tat peptides upon delivery into cells.
2. Determine the mechanism of the Tat peptide inhibition.
3. Determine the inhibitory effect of peptides on human ''primary'' T-lymphocytic and monocytic cells infected with various HIV–1 clades (subtypes A, G, O, M).
4. Determine the inhibitory effect of peptide derivatives on Kaposi's sarcoma primary cells.
5. Determine the effective dose of Tat peptide analogs in combination with other anti-retroviral drugs.
6. Conduct in vivo testing of appropriate compounds and/or peptide analogs.
7. Evaluate in vivo test results.
8. Prepare manuscripts for publication.

The role of the collaborator, includes the following:

1. Synthesize soluble organic compounds using peptide mimetics to mimic the inhibitory activity of the soluble analogs.
2. Determine the mechanism of the Tat peptide inhibition.
3. Establish a suitable non-invasive peptide delivery system for the preclinical and animal model studies.
4. Determine the effective dose of Tat peptide analogs in combination with other anti-retroviral drugs.
5. Determine the stability, half-life, and distribution of the Tat peptides upon delivery into cells.
6. Conduct in vivo testing of appropriate compounds and/or peptide analogs.
7. Evaluate in vivo test results.
8. Develop vehicle for delivery of compounds to patients.
9. Conduct pre-clinical and clinical trials of appropriate candidate compounds and/or peptide analogs.
10. Prepare manuscripts for publication.

Criteria for choosing the collaborator include its demonstrated experience and commitment to the following:

1. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.
2. Scientific expertise in and demonstrated commitment to the development of drug delivery systems.
3. Experience in preclinical and clinical drug development.
4. Experience and ability to produce, package, market and distribute pharmaceutical products.
5. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.
6. A willingness to cooperate with the NCI and FDA in the collection, evaluation, publication and maintaining of data from pre-clinical studies and clinical trials regarding the subject compounds.
7. Provision of defined financial and personnel support for the CRADA to be mutually agreed upon.
8. An agreement to be bound by the DHHS rules involving human and animal subjects.
9. Scientific expertise in and demonstrated commitment to the treatment of HIV infection and related disorders.
10. Provisions for equitable distribution of patent rights to any CRADA inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government and (2) an option for the collaborator to elect an exclusive or nonexclusive license to Government owned rights under terms that comply with the appropriate licensing statutes and regulations.

Dated: February 7, 1997.

Thomas D. Mays,

Director, Office of Technology Development, OD, NCI.

[FR Doc. 97–4742 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

Notice of a Meeting of the Office of AIDS Research Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the Fourth meeting of the Office of AIDS Research Advisory Council (OARAC) on Friday, March 14, 1997, at the National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Sixth Floor, Conference Room 6. The meeting will be open to the public from 8:30 am to 3:30 pm.

The Office of AIDS Research is responsible for the planning, coordination, and evaluation of the NIH AIDS research program. The OARAC was established to advise the Director of the OAR regarding these activities.

The agenda of the open meeting will include: The FY 1998 budget request for NIH AIDS research; presentation of the NIH Implementation Plan in response to the Report of the NIH AIDS Research Program Evaluation Task Force; an update on the NIH Panel to Define Principles of Therapy of HIV Infection; an update on the Prevention Science Working Group; and presentations regarding the new initiatives in AIDS vaccine research.

In accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C. and section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, the meeting will be closed to the public from 3:45 p.m. until adjournment for discussions of which the premature disclosure could impede implementation of recommendations.

Copies of the meeting agenda and the roster of council members will be furnished upon request by Jeannette R. De Lawter, Program Analyst, Office of AIDS Research, National Institutes of Health, Building 31, Room 4B54, 9000 Rockville Pike, Bethesda, MD 20892, Phone (301) 402–3357, Fax (301) 402–3360. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. De Lawter no later than March 6.

Dated: February 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4735 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of advisory committee meetings of the National Cancer Institute.

The meetings will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cynthia Morgan, Committee Management Specialist, at (301) 496–5708 in advance of the meetings.

A portion of the meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), 552b(c)(6), and 552(c)(9)(B), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual programs and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the programs, including consideration of personnel

qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and premature disclosure of recommendations which would inhibit the final outcome and subsequent implementation of recommendations.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630E, 6130 Executive Boulevard, MSC 7410, Rockville, Maryland 20892–7410, (301) 496–5708 will provide summaries of the meetings and rosters of the committee members, upon request.

Committee Name: Board of Scientific Counselors, National Cancer Institute Basic Sciences Subcommittee B.
Date: March 2, 1997.
Place: Hyatt Regency Bethesda, One Bethesda Metro Court, Bethesda, MD 20814.
Closed: 9 p.m. to 10 p.m.
Agenda: To discuss administrative confidential reports pertaining to laboratories in the Division of Basic Sciences.
Contact Person: Florence Farber, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: Joint Meeting, National Cancer Institute Board of Scientific Advisors and Board of Scientific Counselors, National Cancer Institute.
Date: March 3, 1997.
Place: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 8:30 p.m. to 11 a.m.
Agenda: Report of the Director, NCI; Congressional Update; Concept Review.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

Committee Name: National Cancer Institute Board of Scientific Advisors.
Date: March 3, 1997.
Place: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 11 a.m. to 12:30 p.m.
Agenda: Discussion of revised cancer centers guidelines and present status of paylines.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

Committee Name: Joint Meeting, Board of Scientific Counselors, National Cancer Institute, Clinical Sciences and Epidemiology Subcommittee A, Basic Sciences Subcommittee B.
Date: March 3, 1997.
Place: Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 11:00 am to 12:30 pm.
Agenda: Discussion of intramural review.
Contact Person: Robert Hammond, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: Advisory Committee to the Director, National Cancer Institute.
Date: March 3, 1997.
Place: Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 12:30 pm to 1:45 pm.
Agenda: NCI Director's charge to the committee and discussion of function and status of various groups reporting their recommendations to the committee.
Contact Person: Susan J. Waldrop, Executive Secretary, National Cancer Institute, NIH, Federal Building, Room 312, 7550 Wisconsin Avenue, MSC 9010, Bethesda, MD 20892–9010, (301) 496–1458.

Committee Name: National Cancer Institute Board of Scientific Advisors.
Date: March 3, 1997.
Place: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 12:45 pm to adjournment approximately 6:00 pm.
Agenda: Integration of BSA and Extramural Divisional interests; RFA Concept Reviews.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

Committee Name: Board of Scientific Counselors, National Cancer Institute, Clinical Sciences and Epidemiology Subcommittee A.
Date: March 3, 1997.
Place: Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 1:45 pm to approximately 3:30 pm.
Agenda: To discuss administrative confidential reports pertaining to laboratories in the Division of Cancer Epidemiology and Genetics and the Division of Clinical Sciences.
Contact Person: Robert Hammond, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: Board of Scientific Counselors, National Cancer Institute Basic Sciences Subcommittee B.
Date: March 3, 1997.
Place: Conference Room 7, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: 1:45 pm to 6:00 pm.
Agenda: To discuss administrative confidential site visit reports.
Contact Person: Florence Farber, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 643G, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, (301) 496–2378.

Committee Name: National Cancer Institute Board of Scientific Advisors.
Date: March 4, 1997.
Place: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 8:30 am to adjournment at approximately 12:00 pm.
Agenda: Status Report: Cancer Control Program Review; RFA Concept Reviews.
Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–4218.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle and the intramural research review cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4736 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Homing Determinants in Hematopoietic Stem/Progenitor Cells.
Date: March 20–21, 1997.
Time: 8:00 p.m.
Place: Holiday Inn Chevy Chase, 5522 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact Person: Carl A. Ohata, Ph.D., Two Rockledge Center, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4737 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Dates of meeting: March 31, 1997.

Time: 9:30 a.m.

Place of meeting: Hyatt Regency, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Thomas D. Sevy, M.S.W., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6107.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: February 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4738 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01 (97–24).

Dates: March 4, 1997.

Time: 12:00 noon.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact person: Dr. George Hausch, Chief, Office of Review, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Contract Review (97–39).

Dates: March 4, 1997.

Time: 2:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact person: Dr. George Hausch, Chief, Office of Review, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of Contract (97–38).

Dates: March 5, 1997.

Time: 2:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Grant (97–28).

Dates: March 10, 1997.

Time: 11:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals. This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Grant (97–22).

Dates: March 28, 1997.

Time: 9:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R03 Grant (97–33).

Dates: April 1, 1997.

Time: 10:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01 & R03 (97–25).

Dates: April 8, 1997.

Time: 1:00 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. Paul Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R13s (97–21).

Dates: April 11, 1997.

Time: 11:30 p.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact person: Dr. George Hausch, Chief, Office of Review, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of PO1 (97–18).

Dates: April 14–15, 1997.

Time: 8:30 a.m.

Place: Bethesda Ramada, 8300 Wisconsin Ave., Bethesda, MD 20814.

Contact person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R13s (97–34).

Dates: April 22, 1997.

Time: 10:00 a.m.

Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (Teleconference).

Contact person: Dr. Paul Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: February 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4739 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee Name: Determinants of Individual Responsiveness to Drugs.

Dates: March 25, 1997.

Time: 8:00 a.m.–until conclusion.

Place: Union Station Hotel, 1001 Broadway, Nashville, Tennessee 37203.

Contact Person: Irene Eskstrand, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 2AS–25K, Bethesda, MD 20892–6200, 301–594–0943.

Purpose: To review and evaluate program project applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions of these could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences: 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: February 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4740 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institutes of Diabetes and Digestive and Kidney Diseases:

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee D.

Date: March 7, 1997.

Time: 8 a.m.–Adjournment.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Ann A. Hagan, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–37F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8886.

Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee B.

Date: March 10, 1997.

Time: 8 a.m.–Adjournment.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Ned Feder, M.D., Scientific Review Administrator, Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8890.

Purpose/Agenda: To review and evaluate research grant applications.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grant Review Committee, Subcommittee C.

Date: March 21, 1997.

Time: 8:30 a.m.—Adjournment.

Place: Doubletree Hotel—Pentagon City, 300 Army Navy Drive, Arlington, Virginia 22202.

Contact Person: Daniel Matsumoto, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8894.

Purpose/Agenda: To review and evaluate research grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: February 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–4741 Filed 2–25–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–30]

Notice of Submission of Renewal of Information Collection Requirement to OMB

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed renewal/reinstatement of the existing information collection requirement described below is being submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Department is soliciting public comments on the subject renewal.

DATES: Comment due date: April 28, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this renewal. Comments should refer to the proposal by name and should be sent to:

Joseph F. Lackey, Jr., OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

John J. Daly, Associate General Counsel for Insured Housing, GI, HUD Building, Room 9236, 451 7th St., SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay 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 existing forms showing clarifications and minor changes necessary to effect the renewal and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development is submitting to OMB an information collection renewal package with respect to two guide formats (hereinafter, ''the Guide'') which specify the components of a legal opinion required by the Department in connection with the insurance of mortgage loans upon multifamily rental projects and health care facilities under Titles II and XI of the National Housing Act, 12 USC 1702, *et seq.*, and 12 USC 1749aaa, or in connection with the making of a capital advance under section 202 of the Housing Act of 1959, as amended. (Please note that references to section 811 of the Cranston-Gonzalez National Affordable Housing Act, as

amended, have been deleted because the Guide is no longer required in connection with that program.)

The Guide articulates those matters upon which HUD requires an opinion from private counsel as well as those matters upon which confirmations are required. The Guide also contains detailed instructions pertaining to the form as well as a format for certifications by the mortgagor as to matters particularly within the knowledge of the mortgagor upon which its legal counsel relies in rendering the opinion. The section 202 Guide format is essentially the same as the insured loan format except for some differences in terminology and program requirements.

To the extent that the Guide represents any ''collection of information,'' the process is necessary to ensure the Department that the attorney representing the mortgagor or owner has followed the otherwise specified requirements of the Department and to ensure the Department that the attorney has exercised an acceptable degree of due diligence in representing the client and in rendering the opinion to the mortgagee and HUD. Although certain aspects of the process have been clarified in the Instructions to the Guide, the process has not changed and no substantive changes have been made the Guide itself. Further, the program coverage has been clarified, but the actual coverage has not been expanded. The extent of due diligence expected to be performed under the Guide is no different than that which HUD has required under the Guide since its approval by OMB on March 11, 1994 (OMB Number 2510–0010). Based upon the experience of HUD in using the Guide for almost three years, HUD has determined that there have been no major problems in using the Guide and that it has been received positively by virtually all of the attorneys utilizing the format. However, there are several places in the Guide and the Instructions thereto where technical corrections are necessary and where expanded Instructions are necessary to facilitate use of the Guide by private attorneys and HUD field counsel.

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed renewal of the 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:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) 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;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3506 of the Paperwork Reduction Act, 44 U.S.C. 3506, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 19, 1997.

George L. Weidenfeller,

Acting General Counsel.

Proposal: Renewal or reinstatement of HUD Guide for Counsel to the Mortgagor and Renewal or reinstatement of HUD Guide for Counsel to Owner.

Office: Office of the General Counsel.

Description of the need for the information and its proposed use: Although it is questionable whether a legal opinion upon which HUD and the mortgagee rely constitutes ''the collection of information,'' HUD is taking a conservative approach and continuing to treat its use of the Guide formats as if they are information collection to eliminate the issue at the outset. The opinion is required to provide comfort to HUD and the mortgage in multifamily rental and health care facility mortgage insurance transactions and similarly to HUD and owners in the capital advance transactions.

Form Number: None (Guide).

Respondents: Counsel to mortgagors of multifamily rental projects and health care facilities upon which the mortgage loans are insured by HUD and counsel to owners of section 202 projects which receive capital advances from HUD.

Frequency of Submission: Variable. Submitted by counsel to the mortgagor or borrower in connection with the closings of insured and direct loans.

Reporting Burden:

Number of respondents	X	Frequency of response	=	Hours per response	=	Burden hours
700		1		1		700

Total Estimated Burden Hours: 700 (Please note that this estimate is based upon an attorney preparing and completing the opinion in one hour; however, the attorney would typically perform in excess of 100 hours in representing the mortgagor or owner and performing those actions necessary to render the opinion. These numbers do not represent any significant change from the previous Guide formats which are being renewed or reinstated with certain technical corrections and clarifications which should result in slight decreases in some cases in the time required to prepare and complete the opinion.) Even though the Guide format is no longer required in connection with the 811 program, the slight decrease in activity thereunder is expected to be off-set by increases in FHA mortgage insurance activity.

Status: Renewal or reinstatement with technical corrections and clarifications (mainly to the Instructions to the Guide). (The previous Guide was approved by OMB on March 11, 1994 (OMB Number 2510–0010)).

Contact: Joseph F. Lackey, Jr. OMB, (202) 395–6880; John J. Daly, HUD, (202) 708–1274.

Dated: February 19, 1997.

For use in FHA Insured Transactions.

January 30, 1997.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATOR

GUIDE FOR OPINION OF MORTGAGOR'S COUNSEL

(TO BE TYPED ON FIRM LETTERHEAD)

(INSERT DATE OF ENDORSEMENT)

Re: Project Name _____
FHA Project No. _____
Location _____
Mortgagor _____

[MORTGAGEE]
[ADDRESS]

[MORTGAGEE'S ATTORNEY]
[ADDRESS]

FEDERAL HOUSING COMMISSIONER
{INSERT APPROPRIATE FIELD OFFICE ADDRESS}

Ladies and Gentlemen: We are [I am] [general/special] counsel to _____ {INSERT NAME OF MORTGAGOR} (the ''Mortgagor''), a _____ {INSERT TYPE OF ENTITY} organized under the laws of the State of _____ {INSERT STATE} (the ''Organizational Jurisdiction), in connection with a mortgage loan (the ''Loan'') in the [original/increased] principal amount of _____ Dollars ($_____) from _____ {INSERT NAME AND TYPE OF MORGAGEE} (the ''Mortgagee'') to the Mortgagor. The proceeds of the Loan will be used to [construct/rehabilitate/purchase/refinance] that certain [multifamily housing/hospital/extended care facility/nursing home/board and care] project (the ''Project''), commonly known as _____ and located in _____ {INSERT COUNTY AND STATE} (said State to be referred to hereinafter as the ''Property Jurisdiction'') on the property described in Exhibit B {ATTACH LEGAL DESCRIPTION} (together with all improvements and fixtures thereon) (the ''Property''). The Loan is being insured by the Federal Housing Administration (FHA), an organizational unit of the United States Department of Housing and Urban Development (''HUD''), pursuant to a commitment for insurance [of advances OR upon completion OR for refinancing] issued to Mortgagee by _____, Agent of the Federal Housing Commissioner, dated _____ [as amended by that certain letter from _____ to _____, dated _____] (''FHA Commitment''). The Loan is being funded from _____ {DESCRIBE FINANCING SOURCE, e.g., tax-exempt bonds/mortgage backed securities guaranteed by GNMA/participation certificates, etc.} The Mortgagor has requested that we [I] deliver this opinion and has consented to reliance by Mortgagee's counsel in rendering its opinion to Mortgagee and to reliance by Mortgagee and HUD in making and insuring, respectively, the Loan and has waived any privity between Mortgagor and us [me] in order to permit said reliance by Mortgagee, counsel to Mortgagee and HUD. We [I] consent to reliance on this opinion by Mortgagee, counsel to Mortgagee, and HUD.

In our [my] capacity as [general/special] counsel to the Mortgagor, we [I] have prepared or reviewed the following:

A. The [{DESCRIBE ORGANIZATIONAL DOCUMENTS, e.g. for corporations: State certified copies of the articles of incorporation, the by-laws, the borrowing resolution, the incumbency certificate and the good standing certificate(s), fictitious Name Registration, Foreign Corporation Registration; for partnerships: certified copies of the partnership agreement and any amendments thereto, the certificate of limited partnership, and any amendments thereto, the good standing certificate (or its equivalent) if provided in the Organizational Jurisdiction, etc.}] of the Mortgagor (collectively, the ''Organizational Documents'');

B. The FHA Commitment [extensions and assignment(s) thereof, if any];

C. The Commitment issued by the Mortgagee and accepted by the Mortgagor, dated _____, (the ''Loan Commitment'');

D. The Regulatory Agreement (_____) {INSERT APPROPRIATE FORM NO.} by and between HUD and the Mortgagor, dated _____, (the ''Regulatory Agreement'');

E. The Note (_____) {INSERT APPROPRIATE FORM NO.} [in the original principal amount of _____ Dollars ($_____) OR in the increased principal amount of _____ Dollars ($_____) by Mortgagor in favor of Mortgagee, dated _____, (the ''Note'');

F. [The Mortgage OR Deed of Trust] (_____ {INSERT APPROPRIATE FORM NO.}), executed by Mortgagor for the benefit of Mortgagee, granting a security interest in the Property, dated _____, (the ''Mortgage'');

G. {INSERT THE NUMBER OF UCC's TO BE FILED} Uniform Commercial Code Financing Statements executed by the Mortgagor as debtor and naming the Mortgagee and HUD as secured parties or as their interests may appear, to be filed in _____, {INSERT LOCATION(S)} (the Filing Offices), upon the {DESCRIBE EVENTS} (the ''Financing Statements'');

H. The Security Agreement by and between Mortgagor and the Mortgagee, granting a security interest under the Uniform Commercial Code, in those items of personality described therein, dated _____, (the ''Security Agreement'');

[I. {TO BE INSERTED IF THE MORTGAGE IS ON A LEASEHOLD ESTATE} The Ground Lease executed by _____ {INSERT LESSOR} as lessor and Mortgagor as lessee recorded in the land records of _____, dated _____, (the ''Ground Lease'').]

[J. {TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS} The Building Loan Agreement (2441) executed by Mortgagee and Mortgagor, dated _____, (the Building Loan Agreement'').]

[K. {TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS} The Construction Contract [Lump Sum (2442) or Cost Plus (2442–A)] executed by _____ (the ''General Contractor'') and Mortgagor, dated _____ (the ''Construction Contract'').]

L. The Mortgagee's Certificate (2434), executed by the Mortgagee, dated _____.

M. The Mortgagor's Certificate (2433), executed by the Mortgagor, dated _____.

N. The Agreement and Certification (3305 or 3305A or 3306 or 3306A), executed by the Mortgagor, dated _____.

O. The Mortgagor's Oath (2478), executed by the Mortgagor, dated _____.

P. The Mortgagor's Opinion Certification, pertaining to factual matters relied on by us [me] in rendering this opinion, executed by the Mortgagor, dated _____, a copy of which is attached hereto as Exhibit— (the ''Certification of Mortgagor'').

Q. A search conducted by _____ dated _____ {no earlier than 30 days before this opinion} of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the ''UCC Search'').

[R. A receipt from the insurance company providing flood insurance evidencing payment for the premium, date _____ (the ''Flood Insurance Receipt'').]

S. The Title Insurance Policy [or date-down if appropriate in a refinancing, for example] issued by _____ {acceptable company under HUD's regulations}, together with all endorsements, and naming HUD and the Mortgagee as insureds as their interests may appear, dated _____, (the ''Title Policy'').

[T. The following documents evidencing zoning compliance, _____, {DESCRIBE ALL DOCUMENTS FULLY} (the ''Zoning Certificate'').]

[U. The building permit(s) issued on _____ by] _____ (the ''Building Permit'').

[V. The following permits, _____, {DESCRIBE PERMITS} which are required for the operation of the project, issued by _____ on _____ (''Other Permits'').]

[W. The Surveyor's Plat OR Survey showing completed project, prepared by _____, dated _____, (the ''Survey'').]

X. The Surveyor's Report (2457), executed by _____ dated _____, (the ''Surveyor's Report'').

[Y. The deferred note (1710, 1712 or 2223) executed by Mortgagor in favor of _____, dated _____, (the ''Deferred Note'').]

[Z. The Performance Bond (2452) and the Payment Bond (2452–A) issued by _____ (Surety) to secure payment and performance of _____ (General Contractor) and running to _____ OR the Completion Assurance Agreement (2450) executed by the General Contractor, dated _____, (the ''Assurance of Completion'').]

[AA. The Owner-Architect Agreement (AIA B181 with HUD Supplement) executed by _____ {INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT} and Mortgagor, dated _____, (the ''Owner-Architect Agreement'').]

[BB. The Off-Site Bond (2479) issued by _____ (Surety) to secure the completion of off-site work by _____ (General Contractor) and running to the Mortgagee and HUD OR Escrow Agreement for Off-Site Facilities (2446) with Schedule ''A'' executed by _____ dated _____ (the ''Assurance of Completion of Off-Site Facilitate'').]

[CC. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the ''Assurance of Utility Services''): _____ {DESCRIBE FULLY}.]

[DD. The Contrator's and/or Mortgagor's Cost Breakdown (2328) executed by the General Contractor, dated _____, (the ''Cost Breakdown'').]

[EE. The Latent Defects Bond (3259) issued by _____ and securing the performance of the General Contractor and running to the Mortgagee and HUD OR Escrow executed by _____, dated _____ (the ''Guarantee against Latent Defects'').]

[FF. The Escrow Deposit Agreement for Incomplete On-Site Improvements (2456) with Schedule A executed by the General Contractor, dated _____, (the ''On-Site Deposit Escrow'').]

[GG. The Contractor's Prevailing Wage Certificate (2403–A) executed by _____, dated _____, (the ''Contractor's Prevailing Wage Certificate'').]

HH. The Request for Endorsement of Credit Instrument (2023) and/or Certificate of Mortgagor and Mortgagee (2455) executed by the Mortgagor and the Mortgagee, dated _____, (the ''Request for Endorsement''). {MODIFY AS APPROPRIATE FOR INSURANCE UPON COMPLETION, REFINACINGS, ETC.}

[II. The Operating Deficit Escrow (2476a) executed by _____, dated _____, (the ''Operating Deficit Escrow'').]

[JJ. The Repair Escrow executed by _____, dated _____, (the ''Repair Escrow'').]

[KK. All documents executed by Mortgagor and any State or local government entity pertaining to development of the Property (the ''Public Entity Agreement'').]

[LL. The following documents executed or delivered in connection with the financing of the loan with the proceeds of bonds exempt from federal taxation: _____ {LIST DOCUMENTS IN ACCORDANCE WITH INSTRUCTIONS} (the ''Bond Documents'').]

MM. The Good Standing Certificate(s) {SEE ''A'' ABOVE} issued by [Organizational Jurisdiction OR Property Jurisdiction, if different], dated _____ {DATE INSERTED MUST BE WITHIN 30 DAYS OF THE DATE OF ENDORSEMENT}, (the ''Good Standing Certificate'').

[NN. The certificate executed by _____ {INSERT ARCHITECT OR OTHER PROFESSIONAL}, dated _____, (the ''Certificate'').]

OO. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Property is located; (ii) the jurisdiction(s) where the Mortgagor is located and does business; and (iii) the jurisdiction where the general partner of the Mortgagor is organized (the ''Docket Search'').

Note: Numerical references in parentheses above are to FHA and HUD form numbers.

The documents listed in B through I above are referred to collectively as the ''Loan Documents.'' The documents listed in J through OO are referred to collectively as the ''Supporting Documents.'' The documents listed in A through OO are referred to collectively as the ''Documents.''

In basing the several opinions set forth in this document on ''our [my] knowledge,'' the words ''our [my] knowledge'' signify that, in the course of our [my] representation of the Mortgagor, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words ''our [my] knowledge'' as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Mortgagor in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Mortgagor (and any person executing any of the Documents on behalf of the Mortgagor), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Mortgagor (and any person executing any of the Documents on behalf of Mortgagor) are genuine.

(e) All Documents which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and/or assigns will: (i)

act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Mortgagor has title or other interest in each item of (i) real and (ii) tangible and intangible personal property (''Personalty'') comprising the Property in which a security interest is purported to be granted under the Loan Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Loan as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in _____.

After reasonable inquiry of the Mortgagor, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Certification of Mortgagor, the Good Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Mortgagor as to the accuracy and completeness of the Certification of Mortgagor, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY MORTGAGOR'S ATTORNEY}

1. The Mortgagor is a _____ {INSERT TYPE OF ENTITY} duly organized and validly existing under the laws of the Organizational Jurisdiction. The Mortgagor is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], is in good standing under the laws of the Organizational Jurisdiction, [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.]

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ {INSERT NAME OF THE TYPE OF TRUST} duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

The general partner of the Mortgagor is a _____ {INSERT TYPE OF ENTITY}, duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ {INSERT TYPE OF ENTITY} in the Property Jurisdiction].

{TO BE USED IN CASES, PRINCIPALLY REFINANCINGS, WHERE ORGANIZATIONAL DOCUMENTS WERE NOT PREPARED BY MORTGAGOR'S ATTORNEY}

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [____], the Mortgagor is a _____ {INSERT TYPE OF ENTITY} validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ entity in the Property Jurisdiction.

{OR, IF THE MORTGAGOR IS A TRUST}

The Mortgagor is _____ {INSERT NAME OF THE TYPE OF TRUST} validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP MORTGAGOR IS AN ENTITY}

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [____], the general partner of the Mortgagor is a _____{INSERT TYPE OF ENTITY}, validly existing and in good standing under the laws of _____ {INSERT STATE} [and is qualified to do business as a foreign _____ {INSERT TYPE OF ENTITY} in the Property Jurisdiction].

2. The Mortgagor has the [corporate/partnership/trust] power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA Commitment.

3. The execution and delivery of the Loan Documents by or on behalf of the Mortgagor, and the consummation by the Mortgagor of the transactions contemplated thereby, and the performance by the Mortgagor of its obligations thereunder, have been duly and validly authorized by all necessary [corporate/partnership/trust] action by, or on behalf of, the Mortgagor.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all as disclosed on Exhibit ____, attached hereto, and as listed and set forth in Paragraph(s) 2 and ____ of this opinion [i.e. good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents, approvals, permits, actions and filings that are required in connection with the execution and delivery by the Mortgagor

of the Loan Documents and the ownership [and operation] of the Property.

5. Each of the Loan Documents has been duly executed and delivered by the Mortgagor and constitute the valid and legally binding promises or obligations of the Mortgagor, enforceable against the Mortgagor in accordance with its terms, subject to the following qualifications:

(i) The effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and

(ii) The effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and

(iii) Certain remedies, waivers, and other provisions of the Loan Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Mortgagor to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN} The execution and delivery of, and the performance of the obligations under, the Loan Documents will not violate the Organizational Documents of the Mortgagor or any applicable provisions of local or State law.

[7. {INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION} To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, executed by _____ {INSERT MORTGAGOR} and _____ {INSERT GENERAL CONTRACTOR}, and referred to in the Construction Contract (the ''Plans and Specifications'').]

[8. {INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY} The attached Zoning Certificate states that the Property appears on the zoning maps of [Property jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

OR

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. {USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE THE DEPARTMENT DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL} Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.

{USE FOR REFINANCINGS} Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements.]

10. Based solely on (a) our [my] knowledge and (b) the Certification of Mortgagor, the execution and delivery of the Loan Documents will not: (i) Cause the Mortgagor to be in violation of, or constitute a default under the provisions of, any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever on any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

11. Based solely on (a) our [my] knowledge, (b) the Certification of Mortgagor and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Mortgagor, or the Property, [{TO BE INSERTED WHEN MORTGAGOR IS NOT A SOLE-ASSET MORTGAGOR} or any other properties of the Mortgagor] [, except as identified on Exhibit _____].

12. The Mortgagor is in appropriate form for recordation in _____ {INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE} _____ {INSERT COUNTY OR CITY} of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personality of the Mortgagor located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code in effect in the Project Jurisdiction, a security interest in each described item or Personality can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the Mortgagee's security interest in the Personality.

14. The Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

[15. {FOR USE ONLY IF MORTGAGOR IS A TRUST} The Mortgagor is an irrevocable trust that has a term consistent with HUD's requirements and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that the Mortgagor may be formed in a jurisdiction other than the Property Jurisdiction. The Mortgagor can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of the Mortgagor, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in [Property jurisdiction].

[16. {USE IN CASES INVOLVING BOND FINANCING} Based solely on the opinion of _____ {INSERT BOND COUNSEL}, dated as of the date hereof and attached hereto as Exhibit _____, to the extent that any of the provisions of the Bond Documents are inconsistent with any of the provisions of the Loan Documents or Supporting Documents, the provisions of the Loan Documents or Supporting Documents shall govern.]

[17. {USE IN CASES WHERE THE DEVELOPMENT OF THE PROPERTY IS GOVERNED BY AN AGREEMENT WITH A PUBLIC ENTITY} Based upon our knowledge and the Certification of Mortgagor, there is no default under the Public Entity Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the

periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing Statements and the expiration of each subsequent _____year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property jurisdiction [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Mortgagor in each of the Documents and the Title Policy and FHA Commitment is the correct legal name of the Mortgagor;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit B hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which has been made; and we [I] agree not to assert a claim or lien against the Project, the Property, the Mortgagor, the Loan proceeds or income of the Project;

(d) other than as counsel for the Mortgagor, we have no interest in the Mortgagor (or any principal thereof) or the Mortgagor or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of the Mortgagor or the Mortgagee. We have no undisclosed interest in the subject matters of this opinion. We do not represent the mortgagee-of-record, any investing lender or investor in the loan transaction, any bridge lender involved in the loan transaction, any lender with a commitment to purchase the loan or any interest therein or any other party involved in the Project or the loan transaction;

(e) based solely on the Surveyor's Report and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 42 U.S.C. 4012a(a); [{INSERT IF FLOOD INSURANCE IS REQUIRED} Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 42 U.S.C. 4012a(a);] and

(f) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of [Mortgagee, its counsel] and HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of Mortgagee, or prospective purchasers of the Loan. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

_____

[Authorized Signature]

For use in HUD-Insured Transactions.

January 30, 1997.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION

INSTRUCTIONS TO GUIDE FOR OPINION OF MORTGAGOR'S COUNSEL

EXPLANATORY COMMENTS

The Guide for this opinion was originally prepared in 1994 in view of changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters and has been revised to reflect approximately three years experience in using the Guide. The principal purpose of this Guide remains to achieve a uniform format which can be utilized throughout the Nation and which will be familiar to HUD counsel in all jurisdictions. Such a standardized format is crucial in an era when less resources are available to the Department; however, it should be emphasized that certain limited changes can be authorized by HUD field counsel as required by local law or by the unique nature of the transaction. An effort has been made in these revised instructions to specify examples in more (but not all) of those areas where such changes can be authorized. Otherwise, the format of the Guide must be followed and is not open to negotiation. In this regard, revisions cannot be justified because of a particular Opinion having been approved by another HUD field office. The exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any requested modification must be analyzed on its own merit and in a particular context. In these explanatory comments, the document may be referred to as the ''Guide'' or the ''Opinion,'' depending upon the context.

The Department regards the counsel to the Mortgagor as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing where the mortgage note is endorsed for mortgage insurance by the Department. Pursuant to 24 CFR Part 24, § 24.105(p), attorneys or others in a business relationship with the Mortgagor are defined as ''principals.'' Even though the Guide is quite different in form from its predecessor (FHA Form No. 1725), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Mortgagor of its obligations to its client, the Mortgagee and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Mortgagor and any other attorneys involved in the transaction should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each mortgage insurance transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the mortgage insurance process (most of which are HUD form documents) and cannot overemphasize the importance of the following:

''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)''

With limited State law related exceptions, we expect that Mortgagor's counsel will be able to follow the Guide in rendering an Opinion and HUD field counsel should not accept Opinions that otherwise substantially or materially deviate from the Guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do

not have time to negotiate each and every Opinion for stylistic changes and it is essential that the Guide be followed in both style and substance in order to ensure a timely closing. The counsel to the Mortgagor is expected to complete a draft Opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (redlined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law or otherwise authorized by these instructions must be brought to the attention of the Assistant General Counsel, Multifamily Mortgage Division, by field counsel along with an explanation as to the necessity for the deviation.

It was anticipated that the Guide could be utilized in connection with all types of closings: insured advances or insurance upon completion (for new construction or substantial rehabilitation); final closings (for refinancings, etc.). This has proved to be the case and, furthermore, the Guide format has been adapted and used in Transfers of Physical Assets (TPAs). However, numerous questions have been raised—particularly in cases involving Section 241 supplemental and equity loans and the various refinancing transactions under Section 223. Therefore, it is important that the correct options be selected in instances where choices are provided and that appropriate deletions or modifications be made to accommodate unique circumstances or programs. On the other hand, it should be emphasized that this does not authorize field counsel to approve changes to the Guide in cases other than where the Guide is being adapted for a special use, e.g. refinancing or equity loan transaction, TPA, etc. Furthermore, HUD has made an administrative policy decision to not require an opinion by counsel to the mortgagor for projects within the ''Small Projects Mortgage Insurance Pilot Program (SPP).'' A Notice will be issued defining small project and clarifying the parameters of the SMPP. The mortgagee will have the option of requiring an opinion by counsel to the mortgagor if the mortgagee so elects. It is anticipated that the Certification of the Owner will be expanded slightly for use in the SMPP to provide assurances and comfort to HUD in such cases. Otherwise, the Guide or a variation thereof should be utilized in all FHA-insured multifamily rental project and health care facility closings.

The Guide is not intended to serve as a closing checklist; therefore, HUD field counsel may update or modify existing closing checklists as necessary to meet constantly changing program needs and handbook instructions and directives. For example, many deletions from the list of Guide documents are appropriate for various types of refinancings, operating loans, equity loans, etc. whereas several additions are necessary in the case of loans for health care facilities (e.g. certificate of need), supplemental loans, and certain complex refinancings.

Brackets continue to be used in the Guide to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The Guide contains some instructions and definitions and is largely self-explanatory; however, the following expanded instructions and clarifications should provide additional assistance to both private counsel and HUD counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Guide unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

- Letterhead and date: The Opinion must be typed on the firm letterhead and dated the date of endorsement of the mortgage note by HUD.
- Reference: Data regarding the project (name, HUD project number, and location and the name or title of the Mortgagor must be accurate and inserted in the appropriate blanks.
- Addressees: The Opinion must be delivered to HUD as well as the Mortgagee making the loan to establish the explicit right of each to rely on the Opinion. The Mortgagee's counsel may be relying on the Opinion for certain aspects of its opinion. If so, the Opinion must also be addressed to counsel to the Mortgagee. HUD is aware that recent case law has raised issues about the extent to which a mortgagee can rely upon such an opinion; therefore, this matter of reliance by the mortgagee could be clarified by the parties at the outset in jurisdictions where the issue has been raised. Regardless of case law, HUD continues to believe that this is a unique transaction where the federal interest as insurer of the mortgagee is clear from the outset and that it is as a result of the unique federal requirements that counsel to the mortgagor is retained to represent the mortgagor in such a fashion that the Opinion rendered by counsel to the mortgagor necessarily must be addressed to, and relied upon by, HUD as the insurer of the mortgagee and the mortgagee in order for the loan transaction to go forward. In cases where counsel to the mortgagee elects not to rely upon the Opinion or counsel to the Mortgagor does not wish to permit reliance by counsel to the mortgagee, the Opinion should not be addressed to and/or delivered to the mortgagee's counsel.
- Description of the Loan: The loan amount is the original principal amount of the loan being insured unless a modification is necessitated in connection with the closing.
- Source of funds for the Loan: In the second full sentence on page 2 the source of funds must be accurately identified.

List of Documents

- In General: If there are no brackets around a particular document, the document is one which is commonly used for initial endorsements for insured advances completion cases; however, it should be emphasized that it is impossible to list every document for every insured loan. Further, no attempt has been made to list all documents utilized in all types of refinancings and certain specialized programs, e.g., certificates of need and licenses for health care programs. Conversely, some documents may not be utilized in a particular transaction and should be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every loan. If bracketed documents are not used in a particular loan transaction, then delete such documents from the list in the actual Opinion. Each document executed in connection with the loan must be listed by its correct title, showing each party executing it and its date. If documents are dated ''as of'' a particular date, then such phrase should be included in the description in the text. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction in the submission to HUD of the initial draft. After HUD review of the initial draft, the Opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the loan transaction must be listed regardless of whether the document is required by HUD or whether the Mortgagor is a party to the document. It should be emphasized that counsel to the Mortgagor is not assuming resuming responsibility for the content of documents that counsel does not prepare and that the Mortgagor does not execute. The review is necessary to provide assurance of consistency from document to document. The appropriate HUD or

FHA form number, if applicable, must be indicated in parenthesis after each document. Please note that the Guide lists a four digit number after virtually all of the standard HUD documents. In many instances as these forms have been updated, the four digit numbers have been changed so that they are now preceded by a ''9.'' The ultimate plan is to standardize a four digit number for each form; therefore, the four digit number has been used to avoid any need for future change.

A. Organizational Documents: All of the Organizational Documents must be reviewed and care should be taken to ensure adherence to the HUD guidelines and directives pertaining to such documents as set forth in:

1. The Instructions to HUD Form 92466 which pertains to corporate, partnership and trust mortgagors;

2. HUD Form 1732 which pertains to nonprofit corporations; and

3. HUD Notice H–95–66 which pertains to partnerships and limited liability companies (LLCs).

G. In the original version of the Guide, the requirement that HUD be named in the Financing Statements as a secured party or as its interests may appear was standardized through requiring the insertion of appropriate language in the Security Agreement. The purpose was to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. Based upon experience to date, a decision has been made that HUD need not be so named in the Financing Statements and Security Agreement. This decision makes it more imperative that there be specificity in the UCC documentation with respect to the securitization of items such as receivables (particularly in the case of hospitals and nursing homes for example) in order to protect the interest of HUD in the securitization of personalty.

J. Building Loan Agreement: This document is a ''bracketed document'' which should only be used in cases involving new construction or substantial rehabilitation. Hence, the document is not required in equity loan transactions and most refinancing transactions and many supplemental loan transactions.

K. Construction Contract. See J. above.

L. Mortgagee's Certificate: It has been argued that this document is unnecessary in the context of certain insured secondary loan transactions because the form is used to document the first mortgagee's consent to the second loan. The first mortgagee would not be involved in such situations. In cases where the consent of the first lender is obtained for a second mortgage insured by HUD, a separate document (for which there is no specified format) is utilized.

The Mortgagee's Certificate is executed by the lender making the loan being insured, which in the cases at issue would be the lender making the second loan, and is one of the most significant closing documents. HUD places great reliance upon the mortgagee's certificate and considers it necessary to reveal all fees, side transactions, etc. Counsel to the Mortgagor is not responsible for the execution of the document and only needs to review the document in the capacity as counsel to the mortgagor.

M. Mortgagor's Certificate: This document may overlap somewhat with other documents as several private attorneys have indicated; nonetheless, the mortgagor's certificate is a significant document upon which HUD relies. This document and the Opinion should be dated the date of the closing.

P. Certification of Owner: Several persons have questioned whether the references in Paragraph 6 to the Public Entity Agreement and the Regulatory Agreement should be changed so that both refer instead to the Public Entity Agreement. The references should not be changed because HUD wants assurance that there will be no violations of the Regulatory Agreement as a result of events that have occurred with the passage of time.

Q. UCC searches: The UCC Search must be conducted within thirty days of closing and can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction.

R. Flood insurance receipt: Arguments have been made that this document is not necessary in equity loan, supplemental loan and refinancing transactions. Flood plain maps change. In insuring a first or a second mortgage, it is just as significant that HUD know whether the property is located in an area where flood insurance is required and, if so, whether the insurance is in effect regardless of whether a prior HUD-insured first mortgage is in effect. HUD would not necessarily have the data on file, and it was determined that this is a matter which counsel to the mortgagor could confirm under item (e) near the end of the Guide. Note that no opinion is required, and the factual determinations necessitated by the Guide are considered within the usual duties of counsel to the mortgagor.

S. Title Insurance Policy: Currently the 1992 ALTA Format (with appropriate endorsements) is required by HUD in most jurisdictions.

T. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. In refinancing cases where no construction is involved, the evidence may be in the form of a letter certifying that the existing building(s) is (are) in compliance with outstanding zoning requirements or, if not, the nonconforming variance, etc., is acceptable. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

In cases involving refinancings, it has been suggested by some attorneys that HUD should have zoning information on hand either as a result of the closing of the first HUD-insured loan or due to periodic site reviews. HUD would not normally maintain data pertaining to local zoning law and the data with respect to the first loan would only be valid with respect to the closing date of that loan. Paragraphs 7, 8 and 9 of the Opinion contain several options with respect to local zoning law. It has also been suggested that evidence of zoning compliance should not be required in Section 241(f) equity loans. The only language applicable to Section 241(f) equity loans is the wording at the end of 9 which pertains to refinancings, viz. ''Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements.'' After considering the issue, it has been determined that a zoning certificate is not essential in Section 241(f) equity loan cases; however, the attorney for the

mortgagor will have to state: ''The project complies with all applicable land use and zoning requirements.'' It is important that HUD be assured that there have been no changes in the land use or zoning which would adversely affect the continued use of the property as a rental housing project. In this context, we reemphasize that the attorney responsible for this matter must be licensed in the property jurisdiction.

U. Building permit(s): If no building permit is required (as would normally be the case in a pure Section 241(f) equity loan), this document is not applicable and should be deleted from the Opinion. (This would also be true with respect to occupancy permits (under V.) unless new permits are required under local law in connection with ''pure'' refinancing transactions.)

V. Permits required for the operation of the project: Several practitioners have argued that the documentation is unnecessary in equity loan and refinancing transactions; however, they have not indicated whether such a position would affect their wording of Paragraph 4 of the Guide. In all cases (including Section 241(f) equity loans), HUD is concerned that any permits required for the continued operation of the project be proper and in place such that an opinion can be rendered with respect to Paragraph 4. It is crucial in existing projects that HUD be assured that no new requirements have been imposed which would thwart continued operation of the project. If no such permits are required, Paragraph 4 should be amended accordingly. This is a matter which counsel to the mortgagor, as a specialist in the property jurisdiction, should be able to ascertain.

W. Surveyor's plat or survey: The survey must be signed, sealed and dated within 90 days of the closing. In a pure Section 241(f) equity loan and certain refinancing transactions, a survey would not normally be required because no new construction would have taken place and, presumably, nothing would have changed with respect to the building(s) and the site. In such situations, if there is other satisfactory evidence that no site changes have occurred, an administrative waiver would necessitate the deletion of the item from the Opinion. See X. below. If the mortgagor's attorney were to become aware of any changes, this would have to be addressed in the Opinion and a survey could be required by HUD depending upon the circumstances.

X. Surveyor's Report: Unless there is a title endorsement protecting against any encroachments, etc., there will have to be a surveyor's certificate indicating that nothing has changed since the last survey with respect to encroachments, lot line violations, construction activity, etc. HUD should not be incurring the risk of insuring any loan if there has been any action which would impair the lender's and HUD's respective positions. As an alternative to a surveyor's certificate, the mortgagor's attorney could rely upon an appropriate certificate from a qualified architect and insert appropriate language in the Opinion.

Z. Assurance of completion (bonds or agreements): This documentation (now bracketed) would not be utilized in a pure refinancing or equity loan transaction and, therefore, would only be used in cases involving some construction where the regulation pertaining to assurance of completion is applicable.

AA. Owner-Architect Agreement: This document (now bracketed like Documents J and K) should only be indicated (where the Guide indicates ''{INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT}'') in cases involving new construction or substantial rehabilitation.

BB. Off-Site Bond or Agreement: This document should only be used in cases where off-site work is involved. As such, the document would not normally be used in pure equity loan transactions or in refinancing transactions involving no construction.

CC. Assurance of utility services: These documents do not pertain to pure Section 241(f) equity loan transactions and certain refinancing transactions and, therefore, should be deleted in those instances.

FF. Escrow Deposit for On-Site Improvements: If any such improvements are required in connection with an equity loan, supplemental loan or refinancing transaction, the form document specified should be tailored to the situation as determined by field counsel. In a situation where such an escrow is necessary, counsel to the mortgagor should modify the form as necessary and present it to field counsel for review.

GG. Contractor's Prevailing Wage Certificate: This item is no longer required in the HUD closing checklist; therefore, some attorneys have taken the position that it can be eliminated from the Opinion. HUD believes the item should be reviewed by counsel to the Mortgagor for the purpose of assuring consistency between the documents and performance under the Construction Contract to which the Mortgagor is a party.

KK. Public Entity Agreement: The references to this document and to the Regulatory Agreement in Paragraph 6 of the Certification of Mortgagor have created some confusion about whether the reference to the Regulatory Agreement should be changed to Public Entity Agreement. The two separate references were intended, and no change should be made.

LL. Bond Documents: This does not include all documents involved in the typical bond financing. It does include those principal documents such as the Prospectus, the Indenture, a sample Bond, etc. All documents executed by the Mortgagor or which establish or describe any obligations of the Mortgagor must be included.

NN. Certificate issued by architect or other professional: Normally such a document would not be necessary in the case of a pure Section 241(f) equity loan and certain refinancing transactions and should be deleted unless those circumstances mentioned under the last sentence pertaining to Document X, above, make the certificate appropriate. Note that ''Certificate'' is a defined term and that the Certificate can come from ''an architect or other professional.'' Consequently, there is no form for the Certificate and HUD field counsel should defer to HUD administrators specializing in architectural and engineering matters in determining the acceptability of the Certificate.

It is referenced in Paragraph 9 of the Opinion and should not be confused with the Zoning Certificate which is also a defined term and is referenced in Paragraph 8.

OO. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Mortgagor or any other attorney licensed in the jurisdiction. Arguments have been made by private counsel that such a docket search is not necessary in all transactions. One of the main purposes of the new Guide was to clearly define the work to be performed by counsel to the mortgagor. It was determined that such a search was within the scope of the fees permitted as a mortgage line item for counsel to the mortgagor. Such a search is important in the case of an existing subsidized project where matters of public record could reveal circumstances wherein it would be inadvisable for HUD to go forward with insuring another loan.

An argument has also been made that several record searches in separate jurisdictions could be necessitated in some cases and that this would cost a significant amount of money with little benefit. As the Guide was being developed, HUD was cognizant of such

a scenario; however, the benefit to HUD of establishing that the public records are clear outweighs the costs to the mortgagor of conducting such searches. In the case where a sole-asset mortgagor is being created, however, a search of the public records in the jurisdiction where the mortgagor is located (assuming a different location from the others iterated) is unnecessary. The Opinion could be amended in those instances to indicate that particular state of facts; however, all of the other searches would have to be done.

Opinions

1. This paragraph contains several options depending upon whether the Mortgagor's organizational documents were prepared by counsel rendering the Opinion and the type of mortgagor entity. Care should be taken to ensure that the correct option is selected and that the requisite information is inserted correctly. It is intended that, where the mortgagor entity or general partner of the mortgagor entity is established by counsel to the Mortgagor, no reliance on other sources is permitted and counsel must opine as to the due organization of the Mortgagor. If a Certificate of Good Standing is not available in the State, but an equivalent document is (i.e., Certificate of Existence), then the bracketed language must be revised to reflect the name/title of the equivalent document so obtained. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Mortgagor's counsel. If the Mortgagor is a foreign corporation or partnership, the Opinion must recite the review of all government approvals required to do business in the Property jurisdiction. If a Certificate of Good Standing or equivalent document cannot be obtained from the applicable governmental authority (e.g., for general partnerships, then the Mortgagor's attorney will be required to do the due diligence necessary to give the opinion or may engage other counsel to render such opinion). If the Property jurisdiction is not the State of formation for the mortgagor entity, counsel must also opine that the Mortgagor is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit. If the Mortgagor is an individual, paragraph one should be deleted from the Opinion.

2. This paragraph provides, among other things, that the Mortgagor possesses all the necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property. This particular provision has generated considerable controversy—particularly where health care facilities are being constructed or substantially rehabilitated in large, urban jurisdictions having a multitude of regulatory requirements pertaining to ownership and operation. Consequently, field counsel have discretion to permit a modification in which Counsel to the Mortgagor itemizes those local governmental requirements which have been evaluated and indicates that, after due diligence inquiry and insofar as the attorney is aware, these local requirements comprise the entire universe of such requirements. The Opinion should further state that, based upon such itemized local requirements and compliance therewith (with all permits, certificates, etc. being itemized), the Mortgagor possesses the power and authority necessary to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA commitment. In most instances involving new construction, a certificate of occupancy will not have been obtained by the time of closing. In such instances, field counsel have discretion to permit an appropriate clarification with respect to that particular instrument.

11. If the Mortgagor or any principal of the Mortgagor is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel in order that the Department can determine whether the endorsement of the loan is possible. Note that litigation involving a principal of the Mortgagor must be disclosed. Confusion has developed when there has been litigation involving lower tiers of a partnership. If the issue cannot be resolved through reference to the definition of ''principal'' in the 2530 regulations, HUD field counsel should consult with HUD program administrators and determine whether the litigation should be disclosed. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel (regardless of whether a ''principal'' or some lesser component of the Mortgagor is the subject of the litigation). As an example, it is not uncommon for neighbors of a proposed site for a group home for persons with disabilities to harbor discriminatory attitudes toward persons with disabilities and to sue to attempt to block the establishment or operation of a group home.

13. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Loan, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings.

If the property is an elderly housing project or a health care facility of if the loan otherwise is to be secured by significant amounts of personal property, the matter should be discussed with field counsel. In the event further discussion is necessary, field counsel should contact the Assistant General Counsel, Multifamily Mortgage Division. For projects in which the personalty is mostly household appliances (e.g., refrigerators) or a limited quantity of smaller equipment, the Opinion will be limited as shown. In other instances, the Opinion may have to be expanded particularly with respect to ensuring that items such as receivables, income stream, etc. are security property.

One or more UCC searches performed not more than 30 days prior to the date of the Opinion must be made and attached to the Opinion.

15. If the Mortgagor is a trust (other than a land trust), then Paragraph 15 must be included in the Opinion. The second sentence need only be included if the trust was formed in a jurisdiction other than the Property jurisdiction.

Acceptability of Counsel

- Mortgagor's counsel must opine as to the law of the Property jurisdiction and the State of Mortgagor's organization, if different from the Property jurisdiction. HUD requires that Mortgagor's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the Mortgagor and another with respect to the real property and loan issues. A combination of the Mortgagor's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in

the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

• The Opinion may be signed by an authorized person of the law firm, in that person's name.

Certification of Mortgagor

• A form of Certification of Mortgagor is attached. The form represents the minimum amount of information that should be obtained from the Mortgagor (but additions, revisions and rephrasings are acceptable so long as the Mortgagor is certifying as to factual matters and not legal conclusions). The Certification of Mortgagor must be dated the same date as the Loan Documents.

Identity of Interest

• Numerous issues have been raised with respect to the confirmation in (d) of the penultimate paragraph of the Guide. A decision was made that the attorney signing the Opinion could not have an identity of interest with the Mortgagor entity. No waivers are possible in such instance. In instances where other members of the firm have an interest in the Mortgagor entity, such interest must be disclosed and such interest must be acceptable to field counsel based upon the ethics rules of the applicable bar. Furthermore, any interest must be administratively acceptable to HUD and 2530 clearance must be obtained. In addition, there appears to be an increasing trend wherein mortgagees are insisting upon using counsel to the mortgagee to handle many aspects of the transaction even though the Opinion is being signed by a separate attorney. There have been some instances where counsel to the mortgagee have asked to represent the mortgagor in whole or in part and to provide all or a part of the Opinion. Confirmation (d) in the penultimate paragraph has been clarified to reflect the intent of HUD from the inception of the Opinion that any such representation of both parties is not permitted.

Liens

• Paragraph (f), which is in the penultimate paragraph of the Opinion, contains a statement that there are no liens or encumbrances against the Property. Several attorneys have objected to making the statement because they indicate that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and intends to process the release after the closing. Except in cases involving the insurance of secondary loans, HUD is only authorized to insure first mortgages; consequently, there cannot be any liens and encumbrances on the property when HUD endorses the mortgage note for insurance. As a result, there cannot be any liens outstanding which would prime the insured mortgage loan. Hence, Paragraph (f) should not be changed.

Reliance on Other Opinions

• The issue of proper wording and format has probably surfaced most often in cases where counsel to the mortgagor is relying on opinions issued by other attorneys. This has occurred most often in cases involving a separate opinion for bond financing documentation, property jurisdiction vs. organizational jurisdiction, zoning, etc. In this area, it is imperative that counsel to the Mortgagor specifically reference and attach the additional opinion(s) and that such opinions track the language of the Guide as close as is practical under the circumstances. HUD field counsel should exercise discretion in this area, taking the unique circumstances into account.

For use in the Section 202, Supportive Housing for the Elderly Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL HOUSING ADMINISTRATION

GUIDE FOR OPINION OF OWNER'S COUNSEL

{TO BE TYPED ON FIRM LETTERHEAD}

{INSERT CAPITAL ADVANCE INITIAL CLOSING DATE}

Re: Project Name _____
202 Project No. _____
Location _____

[OWNER]
[ADDRESS]

FEDERAL HOUSING COMMISSIONER
{INSERT APPROPRIATE FIELD OFFICE ADDRESS}

Ladies and Gentlemen: We are [I am] [general/special] counsel to _____ {INSERT NAME OF OWNER} (the ''Owner''), a _____ {INSERT TYPE OF ENTITY} organized under the laws of the State of _____ {INSERT STATE, INCLUDES THE DISTRICT OF COLUMBIA AND PUERTO RICO} (the ''Organizational Jurisdiction''), in connection with a first Mortgage (Deed of Trust) and Mortgage Note (''Capital Advance'') in the amount of _____ Dollars ($_____) from HUD to the Owner. Such Capital Advance is being made pursuant to a Capital Advance Agreement dated as of the date hereof, by and between HUD and the Owner and will be used to construct, rehabilitate or acquire and maintain the captioned 202 project (''Project''), commonly known as _____ and located in _____ {INSERT COUNTY AND STATE} (said State to be referred to hereinafter as the ''Property Jurisdiction'') on the property described in Exhibit _____ {ATTACH LEGAL DESCRIPTION} (together with all improvements and fixtures thereon) (the ''Property''). The Capital Advance is being issued, pursuant to Section 202 of the Housing Act of 1959, as amended, a firm commitment dated _____ and which expires on _____ (''Commitment''). The Owner has requested that we [I] deliver this opinion and has consented to reliance by HUD in making the Capital Advance and has waived any privity between Owner and us [me] in order to permit such reliance by HUD. We [I] consent to reliance on this opinion by HUD.

In our [my] capacity as [general/special] counsel to the Owner, we [I] have prepared or reviewed the following Capital Advance Documents, Organizational Documents and Collateral Documents (will be collectively referred to as ''the Documents'' unless expressly limited to a group of the above referenced documents).

Note: Numerical references in parenthesis following the Documents listed below are to HUD form numbers:

CAPITAL ADVANCE DOCUMENTS:

A. BEFORE INITIAL CLOSING

1. Capital Advance Agreement (HUD 90167–CA).
2. Requisition for Disbursement of Capital Advance Funds (HUD–92403–CA).
3. Direct Deposit Sign-up Form (SF 1199A)
4. Project Rental Assistance Contracts (PRAC) documents:
a. Part I of Agreement to Enter into PRAC (HUD 90172A–CA);
b. Part II of Agreement to Enter into PRAC (HUD 90172B–CA);
c. Part I of the PRAC (HUD 90173A–CA); and
d. Part II of the PRAC (HUD 90173B–CA).

B. INITIAL CLOSING

1. Firm Commitment for Capital Advance Financing (HUD–92432–CA) [including reissued, revised or amended commitments, thereof, if any].
2. Owner's Certificate (HUD 92433–CA).

3. Evidence of Owner's Deposit (minimum capital investment) (escrow agreement, see 6(q)(1) of commitment) and ability to provide moveable furnishings and equipment not covered by capital advance, if necessary.

4. Agreement and Certification (HUD 93566–CA).

5. Mortgage Note (HUD–93432–CA).

6. Mortgage (Deed of Trust) (HUD–90165–CA).

7. Regulatory Agreement (HUD–92466–CA).

8. Use Agreement (HUD 90163–CA).

9. Owner's assurance of funds to cover costs over and above capital advance (if applicable).

ORGANIZATIONAL DOCUMENTS

(Documents regarding Organization of Non-Profit Owner)

1. Approved and certified articles of organization (Certificate of Incorporation (HUD–91732A–CA).

2. Certificate of Good Standing.

3. By-laws.

4. Incumbency Certificate.

5. Owner's I.R.S. Tax-Exemption Ruling.

6. Corporate Resolution.

COLLATERAL AND OTHER DOCUMENTS (''Collateral Documents'')

1. Collateral Agreements, if any.

2. {INSERT THE NUMBER OF UCC's TO BE FILED} Uniform Commercial Code Financing Statements executed by the Owner as debtor and naming HUD as secured party as its interest may appear, to be filed in _____, {INSERT LOCATION(S)} (the Filing Offices), upon the {DESCRIBE EVENTS} (the ''Financing Statements'');

3. The Security Agreement by and between Owner and HUD, granting a security interest under the Uniform Commercial Code, in those items of personalty described therein, dated _____, (the ''Security Agreement'');

4. A search conducted by _____ dated _____ {no earlier than 30 days before this opinion} of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the ''UCC Search'').

[5. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____, (the ''Flood Insurance Receipt'').]

6. The Title Insurance Policy issued by _____ {acceptable company under HUD's regulations}, together with all endorsements, and naming HUD as insured, dated _____, (the ''Title Policy'').

[7. The Surveyor's Plat OR Survey showing completed project, prepared by _____, dated _____, (the ''Survey'').]

8. The Surveyor's Report (HUD–92457), executed by _____, dated _____, (the ''Surveyor's Report'').

[9. The following documents evidencing zoning compliance _____, {DESCRIBE ALL DOCUMENTS FULLY} (the ''Zoning Certificate'').]

[10. The building permit(s) issued on _____, by _____ (the ''Building Permit'').]

[11. The following permits, _____, {DESCRIBE PERMITS} which are required for the operation of the project, issued by _____ on _____ (''Other Permits'').]

12. Construction Contract:

a. Lump Sum (HUD 92442–CA) OR Cost Plus (HUD 92442A–CA), as appropriate;

b. Contractor's Requisition (HUD 92448); and

c. Construction Contract, Incentive Payment (HUD 92443–CA), if applicable.

[13. The Contractor's and/or Mortgagor's Cost Breakdown (HUD 92328) executed by the General Contractor, dated _____, (the ''Cost Breakdown'').]

14. Assurance of Completion:

a. Performance/Payment Bond 100% Dual-Obligee (92452–CA); OR

b. Performance Bond (FHA 2452) and Payment Bond (FHA 2452A) and Surety Company's Telegram or Facsimile; OR

c. Completion Assurance Agreement (HUD 92450–CA).

[15. Owner-Architect Agreement (AIA Document B181) (see attached to Capital Advance Agreement; HUD 90167–CA) and HUD Amendment (HUD 90169–CA)) executed by _____ {INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT} and Owner, dated _____, (the ''Owner-Architect Agreement'').]

16. Real Estate Tax Exemption (if applicable).

[17. Lease (if mortgage is on leasehold) (Lease Addendum at Appendix 14 of HUD Handbook 4571.5).]

18. Land-Dispositions Contract and Deed (required only for projects in urban renewal areas).

19. Insurance and fidelity bonds:

a. All applicable insurance policies per Property Insurance Requirements (HUD–90164–CA), including Property Insurance Schedule (HUD–92329); and

b. Blanket Fidelity Bond.

20. Assurance of Completion of Off-site Facilities, if applicable:

a. Off-site Bond (HUD 90177–CA); OR

b. Escrow Agreement for Off-site Facilities (HUD 90170–CA).

21. Fair Housing

a. FHEO Certification in Connection with the development and operation of the project (assurance of compliance with HUD regulations (HUD Form 915); and

b. Affirmative Fair Housing Marketing Plan (HUD will determine if administratively satisfied; Exhibit 3 to PRAC).

[22. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the ''Assurance of Utility Services''): _____ {DESCRIBE FULLY}].

[23. The certificate executed by _____ {INSERT ARCHITECT OR OTHER PROFESSIONAL}, dated _____, (the ''certificate'').]

[24. A search conducted by _____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in (i) the jurisdiction where the Property is located; and (ii) the jurisdiction(s) where the Owner is organized, located and does business (''Docket Search'').]

[25. Additional Closing Requirements (State or local requirements).]

In basing the several opinions set forth in this document on ''our [my] knowledge,'' the words ''our [my] knowledge'' signify that, in the course of our [my] representation of the Owner, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words ''our [my] knowledge'' as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Owner in any capacity including, but not limited to, in connection with the Capital Advance. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to know facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), has duly and validly executed and delivered each such instrument, document, and

agreement to be executed in connection with the Capital Advance to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Owner (and any person executing any of the Documents on behalf of the Owner), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Owner (and any person executing any of the Documents on behalf of the Owner) are genuine.

(e) All Documents which are submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records, and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and assigns will: (i) act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such remedies that would constitute other than fair and impartial dealing; and

(iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Owner has title or other interest in each item of (i) real and (ii) tangible and intangible personal property (''Personality'') comprising the Property in which a security interest is purported to be granted under the Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Capital Advance as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property and (ii) Owner's [Chief Executive Office] [only place of business] [residence] is located in _____. After reasonable inquiry of the Owner, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering this opinion we [I] have, with your approval, relied as to certain matters of fact set forth in the Owner's Opinion Certificate, the Certificate of Good Standing [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Owner as to the accuracy and completeness of the Owner's Opinion Certificate, the Certificate of Good Standing, [and such other Documents], and we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY OWNER'S ATTORNEY}

1. The Owner is a private non-profit corporation, duly organized and validly existing under the laws of the Organizational Jurisdiction. The Owner is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit _____, is in good standing under the laws of the Organizational Jurisdiction and is qualified to do business as a foreign _____ entity in the Property Jurisdiction based on a review of _____.

2. The Owner has the corporate power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications, tax exempt status and approvals to own (including the authority to borrow the proceeds of the Capital Advance, to encumber the Property with the Security Instrument, to execute the Capital Advance Documents) and operate the Property and such other assets as is necessary to carry on its business and to carry out all of the transactions contemplated by the Capital Advance Documents and Collateral Documents as of the date of this opinion and to comply with all applicable statutes and regulations of the Federal Housing Commissioner in effect on the date of the Firm Commitment.

3. The execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) by or on behalf of the Owner, and the consummation by the Owner of the transactions contemplated thereby, and the performance by the Owner of its obligations thereunder, have been duly and validly authorized by all necessary corporate action by, or on behalf of, the Owner.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all disclosed on Exhibit _____, attached hereto, and as listed and set forth in Paragraphs ____ of this opinion [i.e., good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents, approvals, permits, actions and filings that are required in connection with the execution and delivery by the Owner of the Capital Advance Documents and Collateral Documents (where applicable) and the ownership [and operation] of the Property.

5. Each of the Capital Advance Documents and Collateral Documents (where applicable) has been duly executed and delivered by the Owner and constitute the valid and legally binding promises or obligations of the Owner, enforceable against the Owner in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally;

(ii) the effect of the exercise of judicial discretion in accordance with general

principles of equity (whether applied by a court of law or of equity); and

(iii) certain remedies, waivers, and other provisions of the Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Owner to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN} The execution and delivery of, and the performance of the obligations under, the Capital Advance Documents and Collateral Documents (where applicable), will not violate the Organizational Documents of the Owner or the applicable provisions of local or State law.]

[7. {INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION} To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, and executed by _____ {INSERT OWNER} and _____ {INSERT GENERAL CONTRACTOR}, and referred to in the Construction Contract (the ''Plans and Specification'').]

[8. {INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY} The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a _____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a _____ is a permitted use in such zone.

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. { USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE HUD DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL} Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.]

10. Based solely upon (a) our [my] knowledge and (b) the Owner's Opinion Certification, the execution and delivery of the Capital Advance Documents and Collateral Documents (where applicable) will not: (i) cause the Owner to be in violation of, or constitute a default under the provisions of, any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents or Collateral Documents.

11. Based solely upon (a) our [my] knowledge, (b) the Owner's Opinion Certification and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Owner, or the Property, [except as identified on Exhibit _____].

12. The Mortgage is in appropriate form for recordation in _____ {INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE} of _____ {INSERT COUNTY OR CITY} of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interest in the Personalty of the Owner located in the Project Jurisdiction, but only to the extent that, under the Uniform Commercial Code as in effect in the Project Jurisdiction, a security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the security interest in the Personalty.

14. The Capital Advance does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

15. The laws of Property Jurisdiction govern the interpretation and the enforcement of the Capital Advance Documents and Collateral Documents (where applicable) notwithstanding that the Owner may be formed in a jurisdiction other than Property Jurisdiction. The Owner can sue and be sued in Property Jurisdiction, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in Property Jurisdiction.

[16. {APPLIES TO CASES WHERE THE LAND IS BEING PURCHASED FROM A PUBLIC BODY} There is no default under the Public Entity Purchase Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Purchase Agreement. {RELIANCE IS PERMITTED ON THE BASIS OF KNOWLEDGE AND OWNER'S CERTIFICATE}]

[17. {APPLIES TO CASES WHERE THE PROJECT IS IN AN URBAN RENEWAL AREA} There is no default under the Land Disposition Contract between _____ and _____, dated _____ and the time within which construction must be completed under the Capital Advance Agreement is within the time specified for completion in said Land Disposition Contract.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with _____ [and _____] not more than _____ prior to and not later than the expiration of the _____ year period from the date of filing of the Financing statements and the expiration of each subsequent _____ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction and [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opionion.

We [I] confirm that:

(a) based on the Organizational Documents, the name of the Owner in

each of the Capital Advance Documents and Collateral Documents (where applicable) and the Title Policy and Firm Commitment is the correct legal name of the Owner;

(b) the legal description of the Property is consistent in the Documents wherein it appears and in Exhibit _____ hereto;

(c) we [I] do not have any financial interest in the Project, the Property, or the Capital Advance, other than fees for legal services performed by us, payment for which has been made; and we [I] agree not to assert a claim or lien against the Project, the Owner, the Capital Advance proceeds or income of the Project;

(d) other than as counsel for the Owner, we have no interest in the Owner or any other party involved in the Capital Advance transaction and do not serve as [a director, officer or] [an] employee of the Owner. We have no undisclosed interest in the subject matters of this opinion;

(e) based solely upon the Surveyor's Report and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 42 U.S.C. 4012a(a). [INSERT IF FLOOD INSURANCE IS REQUIRED: Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 42 U.S.C. 4012a(a).]

(f) we [I]] do not represent any development team member or any other party or interest in connection with the above referenced housing project other than the Owner except for representation as the personal attorney for an individual associated with a development team member in matters not involving the housing project. If a dispute arises between the Owner and a development team member, my efforts will be directed exclusively towards serving the Owner. We [I] have submitted to HUD an Identity of Interest and Disclosure Certification; and

(g) to our knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy.

The foregoing opinions are for the exclusive reliance of HUD; however, they may be made available for informational purposes to, but not for the reliance of, the assigns or transferees of the Owner, or prospective purchasers of the Project. We [I] acknowledge that the making, or causing to be made, of a false statement of fact in this opinion letter and accompanying materials may lead to criminal prosecution or civil liability as provided pursuant to applicable law, which may include 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.

Sincerely,

_____

[Authorized Signature]

To be used in FHA Insured Transactions.

JANUARY 30, 1997.

EXHIBIT A TO OPINION OF MORTGAGOR'S COUNSEL

CERTIFICATION OF MORTGAGOR

This Certification of Mortgagor is made the _____ day of _____, 19____, by _____, (the ''Mortgagor'') for reliance upon by _____ (the ''Mortgagor's Counsel'') in connection with the issuance of an opinion letter dated of even date herewith (the ''Opinion Letter'') by (''Mortgagor's Counsel'') as a condition for the provision of mortgage insurance by the Department of Housing and Urban Development (''HUD'') of the $_____ loan (the ''Loan'') from _____ (the ''Mortgage'') to Mortgagor. In connection with the Opinion Letter, the Mortgagor hereby certifies to Mortgagor's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Mortgagor or authorizing the Loan, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Loan as reflected in the Loan Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Loan Documents.

3. All tangible personal property of the Mortgagor in which a security interest is granted under the Loan Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personality] is located at the Property (as defined in the Opinion Letter) and the Mortgagor's [Chief Executive Office] [only place of business] [residence] is located in . _____

4. The execution and delivery of the Loan Documents will not (i) cause the Mortgagor to be in violation of, or constitute a material default under the provisions of any agreement to which the Mortgagor is a party or by which the Mortgagor is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Mortgagor is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Mortgagor, except as specifically contemplated by the Loan Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Mortgagor, the Property, or any other properties of the Mortgagor [,except as identified on Exhibit [__], List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

IN WITNESS WHEREOF, the Mortgagor has executed this Certification of Mortgagor effective as of the date set forth above.

MORTGAGOR:

_____

_____

_____

_____

_____

For use in the Section 202, Supportive Housing for the Elderly Program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION

INSTRUCTIONS TO GUIDE FOR OPINION OF OWNER'S COUNSEL

EXPLANATORY COMMENTS

The Guide for this opinion was originally prepared in 1994 in view of changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters and has been revised to reflect approximately three years experience in using the Guide. The principal purpose of this Guide remains to achieve a uniform format which can be utilized throughout the nation and which will be familiar to HUD counsel in all jurisdictions. Such a standardized format is crucial in an era when less resources are available to the Department; however, it should be emphasized that certain limited changes can be authorized by HUD field counsel as required by local law or by the unique nature of the transaction. An effort has been made in these revised instructions to specify examples in more (but not all) of those areas where such

changes can be authorized. Otherwise, the format of the Guide must be followed and is not open to negotiation. In this regard, revisions cannot be justified because of a particular Opinion having been approved by another HUD field office. The exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any requested modification must be analyzed on its own merit and in a particular context. In these explanatory comments, the document may be referred to as the ''Guide'' or the ''Opinion,'' depending upon the context.

The Department regards the counsel to the Owner as the crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing in connection with a first Mortgage (Deed of Trust) and Mortgage Note (''Capital Advance'') from HUD to the Owner. Pursuant to 24 CFR 24.105(p), attorneys or others in a business relationship with the Owner are defined as ''principals.'' Even though the Guide is quite different in form from its predecessor (HUD 90166–CA), the substance is not intended to be substantially different and the revision does not in any fashion relieve the counsel to the Owner of its obligations to its client and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the counsel to the Owner and any other attorneys involved in the transaction, should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each transaction in which counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the Capital Advance Program (most of which are HUD form documents) and cannot overemphasize the importance of the following:

''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)''

With limited state law related exceptions, we expect that Owner's counsel will be able to follow the Guide in rendering an opinion and HUD field counsel should not accept opinions that otherwise substantially or materially deviate from the Guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do not have time to negotiate each and every Opinion for stylistic changes and it is essential that the Guide be followed in both style and substance in order to ensure a timely closing. The counsel to the Owner is expected to complete a draft Opinion for submission to HUD field counsel at least ten days prior to the closing along with the other closing documents. Any deviations should be specifically identified (redlined or highlighted) and discussed with field counsel at that time. Any material deviation not required by State or local law must be brought to the attention of HUD's Office of General Counsel by field counsel along with an explanation as to the necessity for the deviation.

The Guide is not intended to serve as a closing checklist; therefore, HUD field counsel may update or modify existing closing checklists as necessary to meet constantly changing program needs and handbook instructions and directives.

Brackets continue to be used in the Guide to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The Guide contains some instructions and definitions and is largely self-explanatory; however, the following expanded instructions and clarifications should provide additional assistance to both private counsel and HUD counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Guide unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

- Letterhead and date: The Opinion must be typed on the firm letterhead and dated the date of the Capital Advance by HUD.
- Reference: Data regarding the project (name, HUD project number, and location must be accurate and inserted in the appropriate blanks.
- Addressees: The opinion must be delivered to HUD to establish the explicit right to rely on the Opinion.
- Description of the Capital Advance: The Capital Advance amount is the original principal amount of the Capital Advance unless a modification is necessitated in connection with the closing.

List of Documents

- In General: If there are no brackets around a particular document, the document is one which is commonly used for capital advance closings; however, it should be emphasized that it is impossible to list every document for every capital advance. Some documents may not be utilized in a particular transaction and should be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every capital advance. If bracketed documents are not used in a particular capital advance transaction, then delete such documents from the list in the actual Opinion. Each document executed in connection with the Capital Advance must be listed by its correct title. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction prior to submission to HUD of the initial draft. After HUD review of the initial draft, the opinion may have to be modified, as necessary, to satisfy HUD.

All documents executed in connection with the Capital Advance must be listed regardless of whether the document is required by HUD. The appropriate HUD or FHA form number, if applicable, must be indicated in parens after each document.

All of the Documents must be reviewed. The following HUD guidelines should be followed in preparing or reviewing the Documents.

1. HUD Handbook 4571.5, Supportive Housing for the Elderly—Conditional Commitment—Final Closing, dated July 1992, should be followed. This Handbook provides copies of most of the Documents required by HUD to be used in the 202 Program Closings.

2. All 202 Owners must adopt the model Certificate of Incorporation (HUD–91732–A–CA) except for Field Counsel modifications related to State law or modifications required by the Internal Revenue Service. All other modifications must be approved by HUD.

3. The HUD field counsel have not been consistent in requiring HUD to be named in the Financing Statements as a secured party or as its interests may appear; consequently, the requirement that HUD be so named is now being standardized. This should be clarified through appropriate language in the Security Agreement. The purpose is to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the mortgage. This is desirable in the event HUD exercises some of its remedies under the Regulatory Agreement in cases where the mortgage has not been assigned to HUD. It will not be necessary for HUD to consent to every UCC termination, renewal, assignment, etc. until HUD's rights as a secured party are established. HUD is being named ''as its interests

appear'' so that, for example, where HUD obtains a court order, HUD will be able to establish a paramount interest in the Project income stream, and other personalty pursuant to the Regulatory Agreement.

4. UCC searches: The UCC Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction. One or more UCC searches performed not more than 30 days prior to the date of the opinion of Owner's counsel must be made and retained by the field counsel in the Capital Advance file.

5. Flood insurance receipt: Arguments have been made that this document is not necessary. Flood plain maps change. HUD must know whether the property is located in an area where flood insurance is required and, if so, whether the insurance is in effect. HUD would not necessarily have the data on file, and it was determined that this is a matter which counsel could confirm near the end of the Guide. Note that no opinion is required, and the factual determinations necessitated by the Guide are considered within the usual duties of counsel.

6. Title Insurance Policy: Currently the 1992 ALTA Format (with appropriate endorsements) is required by HUD in most jurisdictions.

7. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases, an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

8. Building permit(s): If no building permit is required, this document is not applicable and should be deleted from the Opinion. This would also be true with respect to occupancy permits unless new permits are required under local law.

9. Permits required for the operation of the project: Several practitioners have argued that the documentation is unnecessary. HUD is concerned that any permits required for the continued operation of the project be proper and in place such that an opinion can be rendered. If no such permits are required, the Opinion should be amended accordingly. This is a matter which counsel to the Owner, as a specialist in the property jurisdiction, should be able to ascertain.

10. Surveyor's plat or survey: The survey must be signed, sealed and dated within 90 days of the closing.

11. Surveyor's Report: There needs to be a surveyor's certificate indicating that nothing has changed since the last survey with respect to encroachments, lot line violations, construction activity, etc. As an alternative to a surveyor's certificate, the Owner's attorney could rely upon an appropriate certificate from a qualified architect and insert appropriate language in the Opinion.

12. Owner-architect Agreement: This document should only be indicated (where the Guide indicates ''[Insert Design and or Construction Architect'']) in cases involving new construction or substantial rehabilitation.

13. Certificate issued by architect or other professional: Normally such a document would not be necessary and should be deleted unless those circumstances mentioned under the last sentence in paragraph 11, above, make the certificate appropriate. Note that ''Certificate'' is a defined term and that the Certificate can come from ''an architect or other professional.'' Consequently, there is no form for the Certificate and HUD field counsel should defer to HUD administrators specializing in architectural and engineering matters in determining the acceptability of the Certificate. It is referenced in Paragraph 9 of the Opinion and should not be confused with the Zoning Certificate which is also a defined term and is referenced in Paragraph 8.

14. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the counsel to the Owner or any other attorney licensed in the jurisdiction.

Opinions

1. This paragraph requires an opinion regarding the organization of the Owner. Care should be taken to ensure that the requisite information is inserted correctly. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Owner's counsel. If the Property jurisdiction is not the State of formation for the Owner, counsel must also opine that the Owner is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit.

2. This paragraph provides, among other things, that the Owner possesses all the necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property. Field counsel have discretion to permit a modification in which Counsel to the Owner itemizes those local governmental requirements which have been evaluated and indicates that, after due diligence inquiry and insofar as the attorney is aware, these local requirements comprise the entire universe of such requirements. The Opinion should further state that, based upon such itemized local requirements and compliance therewith (with all permits, certificates, etc. being itemized), the Owner possesses the power and authority necessary to own and operate the Property and to carry out all of the transactions required by the Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA commitment. In most instances involving new construction, a certificate of occupancy will not have been obtained by the time of closing. In such instances, field counsel have discretion to permit an appropriate clarification with respect to that particular instrument.

11. If the Owner is involved in any litigation, all such litigation matter(s) must be disclosed in writing to HUD field counsel. If the litigation involves HUD's compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel.

13. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other

than the Capital Advance, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closings. One or more UCC searches performed not more than 30 days prior to the date of the Opinion must be made and attached to the Opinion.

Acceptability of Counsel

• Owner's counsel must opine as to the law of the Property jurisdiction and the State of Owner's organization, if different from the Property jurisdiction. HUD requires that Owner's counsel be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple jurisdictions are involved, two opinions may be required: one with respect to the organization of the owner and another with respect to the real property and loan issues. A combination of the Owner's regular counsel and special local counsel may be required to satisfy this requirement. If counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the counsel should include a written explanation in the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures

• The Opinion may be signed by an authorized person of the law firm, in that person's name.

Owner's Certification

• A form of Owner's Certification is attached. The form represents the minimum amount of information that should be obtained from the Owner (but additions, revisions and rephrasings are acceptable so long as the Owner is certifying as to factual matters and not legal conclusions). The Owner's Certification must be dated the same date as the Capital Advance Documents.

Identity of Interest

• Numerous issues have been raised with respect to the confirmation in (d) of the penultimate paragraph of the Guide. A decision was made that the attorney signing the Opinion could not have an identity of interest with the Owner. No waivers are possible in such instance. In instances where other members of the firm have an interest in the Owner entity, such interest must be disclosed and such interest must be acceptable to field counsel based upon the ethics rules of the applicable bar. Furthermore, any interest must be administratively acceptable to HUD and 2530 clearance must be obtained. In addition, there appears to be an increasing trend wherein FHA mortgagees are insisting upon using counsel to the mortgagee to handle many aspects of the transaction even though the Opinion is being signed by a separate attorney. There have been some instances where counsel to the mortgagee has asked to represent the mortgagor in whole or in part and to provide all or a part of the Opinion. Confirmation (d) in the penultimate paragraph has been clarified to reflect the intent of HUD from the inception of the Opinion that any such representation of both parties is not permitted.

Liens

• Paragraph (f), which is in the penultimate paragraph of the Opinion, contains a statement that there are no liens or encumbrances against the Property. Several attorneys have objected to making the statement because they indicate that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and intends to process the release after the closing. Unless authorized by HUD, as in cases involving secondary loans, there cannot be any liens and encumbrances on the property when HUD makes a capital advance. As a result, there cannot be any liens outstanding which would prime the mortgage. Hence, Paragraph (f) should not be changed.

Reliance on Other Opinions

• The issue of proper wording and format has probably surfaced most often in cases where counsel to the Owner is relying on opinions issued by other attorneys. This has occurred most often in cases involving a separate opinion for property jurisdiction vs. organizational jurisdiction, zoning, etc. In this area, it is imperative that counsel to the Owner specifically reference and attach the additional opinion(s) and that such opinions track the language of the guide as close as is practical under the circumstances. HUD field counsel should exercise discretion in this area, taking the unique circumstances into account.

For use in the Section 202, Supportive Housing for the Elderly Program

EXHIBIT A TO OPINION OF OWNER'S COUNSEL

CERTIFICATION OF OWNER

This Certification of Owner is made the _____ day of _____, 19____, by _____, (the ''Owner'') for reliance upon by _____ (the ''Owner's Counsel'') in connection with the issuance of an opinion letter dated of even date herewith (the ''Opinion Letter'') by (''Owner's Counsel'') as a condition for the making of a capital advance by the Department of Housing and Urban Development (''HUD'') in the amount of $_____ (the ''Capital Advance'') to the Owner. In connection with the Opinion Letter, the Owner hereby certifies to Owner's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Owner or authorizing the Capital Advance, and the Organizational Documents have not been amended or modified except as stated in the Opinion Letter.

2. The terms and conditions of the Capital Advance as reflected in the Capital Advance Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Capital Advance Documents.

3. All tangible personal property of the Owner in which a security interest is granted under the Capital Advance Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personality] is located at the Property (as defined in the Opinion Letter) and the Owner's [Chief Executive Office] [only place of business] [residence] is located in

4. The execution and delivery of the Capital Advance Documents will not (i) cause the Owner to be in violation of, or constitute a default under the provisions of any agreement to which the Owner is a party or by which the Owner is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Owner is subject, and (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Owner, except as specifically contemplated by the Capital Advance Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Owner, the Property, or any other properties of the Owner [, except as identified on Exhibit ____, List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the Regulatory Agreement.

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

In Witness Whereof, the Owner has executed this Certification of Owner effective as of the date set forth above.

OWNER:

_____

_____

_____

_____

_____

[FR Doc. 97–4685 Filed 2–25–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary; Water and Science Central Utah Project Completion Act; Uintah Unit Replacement Project

AGENCIES: The Department of the Interior (Department) and the Central Utah Water Conservancy District (District).

ACTION: Notice of availability of the Draft Environmental Impact Statement: DES 97–7.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department, and the District have issued a joint Draft Environmental Impact Statement (Draft EIS) on the Uintah Unit Replacement Project (Uintah Unit). The Draft EIS consists of a proposed action and alternatives to construct a combination of features that will develop water supplies for the Uintah Unit of the Central Utah Project in the Uinta Basin of northeastern Utah. The Draft EIS evaluates the environmental impacts of water storage reservoirs, improved diversion and distribution of water, water conservation, stabilization of high mountain lakes, instream flows, fish and wildlife mitigation and enhancement, recreation developments and land retirement.

There is a need to manage the water supply within the Uintah Unit to develop resources of the Ute Indian Tribe of the Uintah and Ouray Reservation, provide early and late season irrigation water, and provide water and facilities for environmental and recreation purposes. The proposed action and alternatives seek to meet these needs by providing storage, improved distribution of water, water conservation, instream flows, fish and wildlife enhancements, and recreation developments.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the Federal Register on December 31, 1992. Since that time, open houses, public meetings, and mail-outs have been conducted to solicit comments and ideas. Any comments received throughout the process have been considered.

DATES: Written comments on the Draft EIS must be submitted or postmarked no later than April 29, 1997. Comments on the Draft EIS may also be presented verbally or submitted in writing at the public hearings to be held at the following times and locations:

- Tuesday, April 1, 1997, 1:00 p.m., Ute Tribal Auditorium, Tribal Headquarters, Fort Duchesne, Utah.
- Tuesday, April 1, 1997, 6:00 p.m., Union High School Auditorium, 135 North Union, Roosevelt, Utah.
- Wednesday April 2, 1997, 6:00 p.m., Salt Lake County Commission Chambers, Room N1101, 2001 South State Street, Salt Lake City, Utah.

The public hearings are being held to address the Draft EIS for the proposed Uintah Unit Replacement Project. In order to be included as part of the hearing record, written testimony must be submitted at the time of the hearing. Verbal testimony will be limited to 5 minutes. Those wishing to give testimony at a hearing should submit a registration form, included at the end of the Draft EIS, to the address listed below by, March 25, 1997.

ADDRESS: Comments on the Draft EIS should be addressed to: Terry Holzworth, Project Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058.

FOR FURTHER INFORMATION: Additional copies of the Draft EIS, copies of the resources technical reports, Draft Feasibility Study, or information on matters related to this notice can be obtained on request from: Ms. Nancy Hardman, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058, Telephone: (801) 226–7187, Fax: (801) 226–7150.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058

Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW, Washington, D.C. 20240

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606

Bureau of Indian Affairs, Uintah and Ouray Agency, 988 South 7500 East, Fort Duchesne, Utah 84026.

Dated: February 21, 1997.

Ronald Johnston,

CUPCA Program Director, Department of the Interior.

[FR Doc. 97–4753 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–RK–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–824747.

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one female captive born Pink pigeon *(Columba mayeri)* from Jersey Wildlife Preservation Trust for the purpose of enhancement of the species through propagation.

PRT–825321.

Applicant: U.S. Fish and Wildlife Service—Ecological Services, Pierre, SD.

The applicant requests a permit to export 5 pairs Black-footed ferret *(Mustela nigripies)* carcasses to National Museums of Scotland, Edinburgh, Scotland for the purpose of enhancement of the survival of the species through scientific research.

PRT–825316.

Applicant: Wildlife Waystation, San Fernando, CA.

The applicant requests a permit to import one female captive-born tiger *(Panthera tigris)* from the Irish Seal Sanctuary, Garristown, Ireland, for the purpose of enhancement of the survival of the species through conservation education.

PRT–678845.

Applicant: Mesa Garden, Belen, NM.

The applicant requests renewal of a permit to export and sell in interstate and foreign commerce artificially propagated seeds and whole plants of tobusch fishhook cactus *(Anicistocactus tobuschi* syn. *Sclerocactus brevihamatus),* Nellie's cory cactus *(Coryphania (=Escobaria) minima),* Sneed pincushion cactus *(Corypantha (=Escobaria) sneedii* var. *Sneedii),*

Kuenzler hedgehog cactus *(Echinocereus fendleri* var. *Kuenzleri)*, Lloyd's hedgehog cactus *(Echinocereus lloydii)*, black lace cactus *(Echinocereus reichenbachii* var. *Albertii)*, Arizona hedgehog cactus *(Echinocereus triglochidiatus* var. *arizonicus)*, Davis green pitaya *(Echinocereus viridiflorus* var. *Davisii)*, Brady's pincushion cactus *(Pediocactus bradyi)*, Knowlton's cactus *(Pediocactus knowltonii)*, Peebles navajo *(Pediocactus Peeblesianus* var. *Peeblesianus)*, Wright's fishhook cactus *(Sclerocactus wrightiae)*, San Rafael cactus *(Pediocactus dispainii)*, for the purpose of enhancement of propagation. This notification covers activities conducted by the applicant over a five year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–824699.

Applicant: Luther College, Decorah, IA.

Type of Permit: Import for public display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 1.

Summary of Activity to be Authorized: The applicant has requested a permit to import for the purpose of public display one polar bear skull found and salvaged by the Ontario Ministry of Natural Resources in 1985, and now surplus to their needs.

Source of Marine Mammals for Research/Public Display: Canada.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: February 21, 1997.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–4771 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[NV–930–1430–00; Nev-016070]

Termination of Recreation and Public Purposes (R&PP) Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates R&PP Classification Nev-016070. The termination of this classification is for record-clearing purposes. The subject lands will remain segregated from all forms of appropriation under the public land laws, including the general mining laws, except for the overlapping classification for a non-competitive FLPMA sale to the City of Henderson. The patent, when issued, will convey the surface and federal mineral interest except for oil and gas.

EFFECTIVE DATE: Termination of the classification is effective upon publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Sharon DiPinto, BLM Las Vegas District Office, 4765 Vegas Drive, Las Vegas, NV 89108, 702–647–5062.

SUPPLEMENTARY INFORMATION: On November 15, 1965, R&PP Lease Nev-016070 was issued to the City of Henderson for landfill purposes. The site is no longer being used for landfill purposes and is in the process of being permanently closed. Sale of the land to the City of Henderson is in direct relation to the costs to be incurred for the remediation and closure of the site. Pursuant to the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), the regulation contained in 43 CFR 2091.7–1, and the authority delegated by Appendix 1 of the Bureau of Land Management Manual 1203, R&PP Classification Nev-016070 is hereby terminated in its entirety for the following described land:

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 28, S½NW¼SW¼, SW¼SW¼,
Sec. 29, S½SE¼.

Containing 140 acres.

Dated: February 19, 1997.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 97–4706 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–HC–P

[OR–095–07–6310–04: G7–0093]

Emergency Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access roads in Lane County, Oregon are temporarily closed to motor vehicle operation and shooting, from February 7, 1997 through September 30, 1997. This closure is made under the authority of 43 CFR 8364.1. The public lands affected by this emergency closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 19 S., R. 5 W.,
Sec. 5: N½, S½SW¼, E½SE¼.

All roads on the public lands listed above are closed as specified above, including specifically BLM Roads Nos. 18–5–31, 19–5–5, 19–5–5.1, 19–5–5.2 and 19–5–5.3.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and its employees and subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months,

as well as the penalties provided under Oregon State law.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect persons from potential harm associated with use of the identified public lands for drinking parties and related reckless and/or dangerous activities, as well as to protect the public from potential harm from logging operations and related timber harvest activities.

DATES: This closure is effective from February 7, 1997 through September 30, 1997.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Christine M. Walsh, South Valley Area Manager, Eugene District Office, at (541) 683–6600.

Date: February 6, 1997.

Christine M. Walsh,

South Valley Area Manager.

[FR Doc. 97–4743 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–33–P

[OR–050–1150–04: GP7–0104]

Prineville District; Closure of Public Lands; Oregon

February 12, 1997.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that, effective immediately, the area legally described below is closed to use of all motorized vehicles (including but not limited to off-road vehicles and snowmobiles) yearlong. Also, the area legally described below is closed to use of all motorized equipment (including but not limited to chainsaws) from March 1 to August 31 annually.

Legal Description

This closure applies to the area located in Township 21 South, Range 10 East, Section 6, South half of the Southwest quarter; Section 6, Southeast quarter; Section 6, Southwest quarter of the Northeast quarter; and Section 7, North half of the Northwest quarter.

The area described above is closed to all motorized vehicle use yearlong. The area described above is closed seasonally to use of all motorized equipment from March 1 to August 31. The purpose of this closure is to protect wildlife resources. More specifically, this closure is ordered to reduce disturbance and habitat destruction to nesting pairs of great gray owl and northern goshawk within the nest stand. Great gray owl and northern goshawk (Bureau sensitive species) are extremely sensitive to disturbance within the nest stand during the time period described above. Suitable nesting habitat for these species is currently very limited within the La Pine management area. Current uses at the site jeopardize the persistence and nesting success of these species in this area. Exemptions to this closure order may be made on a case-by-case basis as approved by the authorized officer. This emergency order will be evaluated in the Urban Interface Plan Amendment to the 1989 Brothers/La Pine Resource Management Plan. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

FOR FURTHER INFORMATION CONTACT: Sarah Nichols, Wildlife Biologist, BLM Prineville District, P.O. Box 550, Prineville Oregon 97754, telephone (541) 416–6725.

SUPPLEMENTARY INFORMATION: Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: February 12, 1997.

James G. Kenna,

Deschutes Resource Area Manager, Prineville District Office.

[FR Doc. 97–4747 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–33–M

[AK–020–1430–01; F–92028]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Alaska

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands near Point Lay, Alaska, have been examined and found suitable for classification for lease or conveyance to the North Slope Borough under provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The North Slope Borough proposes to use the lands for a wastewater treatment plant site.

Umiat Meridian

Within sec. 36, T. 5 N., R. 45 W.

Containing 1.84 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to: the Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of Interior; rights-of-way for ditches and canals constructed by the authority of the United States; reservations of all minerals to the United States, together with the right to prospect for, mine, and remove the minerals.

FOR FURTHER INFORMATION CONTACT: Mike Worley, Realty Specialist, Bureau of Land Management, Northern District Office, 1150 University Avenue, Fairbanks, Alaska 99709–3899 and by telephone at (907) 474–2309 or toll free 800–437–7021.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for the conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Northern District Office, 1150 University Avenue, Fairbanks, Alaska 99709–3899.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a wastewater treatment plant site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a wastewater treatment plant site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

Dated: February 18, 1997.

Dee R. Ritchie,

District Manager.

[FR Doc. 97–4713 Filed 2–25–97; 8:45 am]

BILLING CODE 1430–JA–P

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee, on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies.

Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal Departments.

At this fourth meeting, the Minerals Management Service (MMS) will be prepared to respond to questions concerning plans to implement previously approved reports.

The Committee will consider a report issued by the Appeals, Settlements, and Alternative Dispute Resolution subcommittee, as well as a report issued by the Phosphate Valuation subcommittee. Additionally, the Committee will hear status reports from all of the subcommittees that have not yet completed work.

DATES: The meeting will be held on: Friday, March 21, 1997, 8:30 a.m.–4:00 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites, Denver Southeast, 7525 East Hampden Avenue, Denver, Colorado 80231, telephone number (303) 696–6644.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Miller, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3060, Denver, CO 80225–0165, telephone number (303) 231–3413, fax number (303) 231–3362.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the Federal Register.

The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available.

Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to Mr. Michael A. Miller, at the address listed above. Minutes of Committee meetings will be available 10 days following each meeting for public inspection and copying at the Royalty Management Program, Building No. 85, Denver Federal Center, Denver, Colorado.

These meetings are being held by the authority of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: February 20, 1977.

Lucy R. Querques,

Associate Director for Royalty Management.

[FR Doc. 97–4705 Filed 2–25–97; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 15, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 13, 1997.

Carol D. Shull,

Keeper of the National Register.

Colorado

Larimer County

Golden High School, 710 10th St., Golden, 97000229

Florida

Indian River County

Hausmann, Theodore, Estate, 4800 16th St., Vero Beach, 97000230

Volusia County

Seminole Rest, E of FL 5, western shore of Mosquito Lagoon, Canaveral National Seashore, Oak Hill, 97000231

Kentucky

Bourbon County

Buckner, Walker, House, 1500 Cane Ridge Rd., Paris vicinity, 97000232

Franklin County

Frankfort Greenhouses, 210, 212, 216 E. Main St., Frankfort, 97000233

Louisiana

Richland Parish

Downtown Delhi Historic District, 606–708 1st St. and 115–201 Broadway, Delhi, 97000234

Mississippi

Copiah County

Crystal Springs Historic District, Roughly bounded by Independence, Pearl, Newton, and Marion Sts., Crystal Springs, 97000236

Washington County

Greenville Commercial Historic District, Roughly, Main St. from Walnut to Poplar Sts., Greenville, 97000235

Nebraska

Douglas County

Gold Coast Historic District, Roughly bounded by 36th, 40th, Jones, and Cuming Sts., Omaha, 97000237

North Carolina

Caswell County

Johnston, John, House, 1325 NC 62, N., Yanceyville vicinity, 97000238

North Dakota

Eddy County

New Rockford Bridge (Historic Roadway Bridges of North Dakota MPS), Across the James River, unnamed co. rd., jct. With ND 15, New Rockford vicinity, 97000173

McKenzie County

Fairview Lift Bridge (Historic Roadway Bridges of North Dakota MPS), Across the Yellowstone River, abandoned railroad, approximately .75 mi. S of ND 200, Cartwright vicinity, 97000239

Tennessee

Knox County

Christenberry Club Room (Knoxville and Knox County MPS), Jct. of Henegar and Shamrock Aves., SW corner, Knoxville, 97000242

Riverdale School (Knoxville and Knox County MPS), 7009 Thorngrove Pike, Knoxville vicinity, 97000243

Seven Islands Methodist Church (Knoxville and Knox County MPS), 8100 Seven Islands Rd., Knoxville vicinity, 97000244

Marshall County

Brittain, Joseph, House, Jct. of Thick and Sweeney Rds., Thick vicinity, 97000241

Sevier County

US Post Office— Sevierville, 167 Bruce St., Sevierville, 97000240

Wilson County

Hale House—Patterson Hotel, 116 Depot St., Watertown, 97000245

Utah

Wayne County

Fruita Rural Historic District, Roughly, along UT 24 from Sulphur Cr. to Hickman Natural Bridge, Torrey vicinity, 97000246.

[FR Doc. 97–4647 Filed 2–25–97; 8:45 am]
BILLING CODE 4310–70–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Title II Development Proposals; Instructions for Cooperating Sponsor Submission of FY 1996 Development Program Results Reports

Pursuant to the Agricultural Market and Transition Act of 1996, notice is hereby given that the Final Draft Guidelines for Fiscal Year 1996 P.L. 480 Title II Cooperating Sponsor Annual Results Report is being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of the draft guidelines should contact: Office of Food for Peace, Room 323, SA–8, Agency for International Development, Washington, D.C. 20523–0809. Contact person: Gwen Johnson, (703) 351–0110. Individuals who have questions or comments on the draft guidelines should contact David Nelson at (703) 351–0168.

The thirty day comment period will begin February 26, 1997.

Dated: February 7, 1997.

Jeanne Markunas,

Acting Director, Office of Food for Peace, Bureau for Humanitarian Response.

Draft for Comment

Instructions for Cooperating Sponsor Submission of FY 1996 Title II Development Program Annual Results Reports

I. Background

This guidance applies only to Title II development activities.

Pursuant to Section 407(f) of the Agricultural Trade Development and Assistance Act of 1954 (P.L. 480), as amended, USAID reports annually to Congress and other interested parties on the impact of Title II food aid in addressing food security. Consequently, USAID management and its field Missions, in consultation with Title II Cooperating Sponsors (CSs), are establishing core results indicators that will ensure consistency and compatibility of information and permit the USAID to demonstrate the impact of food aid resources over a planned period of time.

USAID Missions and the Office of Food for Peace (FFP) have been designated as ''Operating Units'' under USAID reengineering guidelines. Each is expected to submit a Results Review and Resources Request (R4) report, covering the strategic support and/or program objectives (SOs) identified in its strategic plan. (The draft BHR/FFP strategic objective for Title II Development Programs is provided in Attachment 1.) CSs are requested to contribute to the process by submitting relevant information on their Title II development program(s).

The FY 1996 Title II Annual Results Report is to be submitted to the respective field Missions and FFP. The Mission will integrate findings on complementary activities from this report into the relevant SOs in its R4 report. It will comment on those activities that are outside of the Mission's Strategic Objectives and forward the report to FFP. FFP will use the contents of the CSs' Annual Results Reports and Mission R4 reports to satisfy USAID and Congressional requirements to demonstrate the impact of food aid in addressing food security as well as to justify resource requests for the next fiscal year.

While preparation of the Title II Annual Results Report is the primary responsibility of CSs, they should consult closely with the Missions in the R4 reporting process. For countries in Africa without a USAID Missions presence, CSs should consult with the responsible REDSO. In addition to the information required in these guidelines, the Missions may, within reason, and for the purposes of their own specific information requirements, request additional information from CSs, related to results reporting and the preparation of R4s.

This Title II Annual Results Report request is consistent with the R4 guidance which has been disseminated to Missions worldwide.

II. Purpose

This Title II Annual Results Report is intended to provide meaningful results-oriented information to USAID, as well as the Congress, host governments, stakeholders, and our ultimate customers, the beneficiaries. It will assist USAID Missions and FFP to demonstrate the impact of Title II food aid on food security by serving as an important information source during Mission and FFP preparation of their R4s during the spring of 1997. The Title II Annual Results Report is to focus on the food aid activity's performance indicators and progress towards the achievement of results. It will also include a discussion of any modifications to the approved Title II activity, and a review of anticipated resource requests for FY 98. CSs are requested to follow the guidelines below to the extent possible and report as well as they can on actual performance for FY 1996 and expected results for FYs 1997, 1998 and 1999, noting linkages to USAID activities.

III. Submission Due Date and Review Process

CSs must consult with their respective Missions regarding the submission due date, which should be linked to the Mission R4 preparation schedule. However, the CS must submit one unbound copy of the Title II Annual Results Report to the BHR/FFP officer responsible for the country activity no later than April 15 (March 15 for countries without a USAID Mission presence).

If the Mission R4 has not been submitted to USAID Washington by the deadline for the Annual Results Report submission to FFP, Missions are required to forward comments on the Annual Results Report. In either document, the Mission must provide any necessary clarifications to a CS's Annual Results Report along with Mission assessments of its accuracy and completeness. For countries in Africa without a USAID presence, such as Burkina Faso, Cape Verde, the Gambia and Mauritania, REDSO assumes this responsibility.

To the extent possible, FFP will coordinate the review of the Title II Annual Results Reports with the Bureau reviews of Mission R4s.

IV. Submission Length

The Title II Annual Results Report should be thorough and concise. Reports should total no more than 10 pages for programs with two or fewer program components and no more than 18 pages for programs with three or more program components, excluding annexes. Repetition of information already presented in the relevant approved Development Activities Plan (DAP) or Previously Approved Activity (PAA) document is unnecessary. Reference to the sections in these documents where key issues are elaborated (including page number and/or section references) should be made, as appropriate.

Draft for Comment

Guidelines for FY 1996, Title II Development Program Annual Results Report

I. Overview of Title II Activities

A. Results

Briefly discuss progress to date or results achieved over the life-of-activity (FY 1996 and prior years encompassed by the currently operative DAP approval), including the role of the Section 202(e) grant (if a grant was utilized during the life of the activity), with particular emphasis on results obtained in FY 1996. Also present anticipated results for FYs 1997–99 in terms of your chosen performance indicators and/or Title II generic indicators.

A good performance assessment will (1) Describe progress over the past year relative to planned results as reflected by the objective's indicators, baselines and targets; (2) state explicitly whether progress met, exceeded or fell short of expectations toward achievement of the objective; (3) interpret significant trends and highlight differences between planned and actual performance; (4) identify reasons for performance shortfalls or greater than expected results; and, (5) indicate plans for evaluation, where contributing factors are not well understood. In cases where up-to-date performance indicator data are not available because of the timing of data collection, you should provide other evidence of progress toward achieving targets.

This part of the report should also include information on evaluation findings, customer feedback results, or other evidence of progress toward achievement of targets that supports a balanced assessment of progress for each objective.

Some examples of key questions to consider are as follows:

—What circumstances led to exceeding or falling short of expected targets? Were targets too high or too low? If so, why?

—Have key assumptions changed?

—How did customer feedback influence the CS's thinking on accomplishing the objective? Did this feedback confirm the program is on track, or are there issues which must be addressed?

—How have inter-sectoral partnering (among non-governmental organizations and governmental actors), and changes in the institutional and policy framework to stimulate community initiative influenced program management?

—What is the significance of what is being accomplished (e.g., what is the food security impact of improved water and sanitation infrastructure, service and practices for the affected 1000 households and the region or country as a whole?)

In part B below, be sure to provide a complete explanation of the status of results monitoring and when performance reports conforming to these guidelines will be submitted.

B. Monitoring, Evaluation, Audits, and Studies

1. Provide a brief update on the monitoring and evaluation system established for your program, its design and how it measured the results presented. State specifically how the baseline data were established, and whether baseline data collection is complete; how performance indicators were chosen and are being monitored; how impact indicators were chosen and are being, or will be, evaluated; and the number and general profile of personnel involved in the monitoring and evaluation effort.

Note: If relevant, attach a revised implementation schedule or monitoring and evaluation plan to serve as a modification to your approved activity.

2. List all evaluations, audits, and studies conducted during the life of the activity. State the purpose, the funding sources, the time period covered, the individuals and/or organizations involved, and the participation of Title II beneficiaries in the evaluations, audits, and studies.

3. Attach as an annex a summary of the key findings or recommendations of the evaluations, audits, or studies conducted in FY 1996 (i.e., a copy of the executive summary). Provide the status of any outstanding recommendations from FY 1996 and/or previous years, if any. If a copy of an evaluation or study has not already been submitted to BHR/FFP, please attach a copy.

C. Monetization Sales (if applicable)

This section fulfills the requirement of Regulation 11 that CSs submit an annual report on monetization and program income activities. A separate annual monetization and program income report is not necessary, as, pursuant to the authority granted him in 22 CFR 211.12 (Regulation 11), the Acting Assistant Administrator/BHR is waiving the following sentence in 22 CFR 211.5(l), ''This annual report should be submitted to AID/W by December 31 of each calendar year for the fiscal year ending September 30 of that calendar year,'' to the extent that it conflicts with this guidance with regard to the timing of reports.

1. Discuss the FY 1996 monetization, anticipated and unanticipated effects on local, regional, or national production, and marketing of the monetized commodity or its substitutes. Note whether the timing of the sale corresponded with the agricultural crop cycle in order to obtain the best sales price.

2. Provide a detailed monetization cost and revenues analysis. The analysis should include the following: date of each commodity sale, the commodity and amount (in MT) monetized, the sales price per MT obtained, the amount in U.S. dollars of local currency generated, and a comparison of the actual sales price to estimated and actual Free alongside ship (FAS), Commodity, Insurance and Freight (CIF), and local commercial market values. When reporting this information, CSs are requested to use the worksheet provided in Attachments 2 and 3.

D. Environmental Compliance

Title II development activities will be reviewed in accordance with USAID's environmental review procedures found in Regulation 16 (22 CFR 216). USAID's Global Environmental Office is currently reviewing of FY 1997 DAPs to determine which Cooperating Sponsor activities may need to undergo an environmental review, if they have not already. Title II activities most likely to be affected by this new requirement are those involved in agricultural and physical infrastructure development. USAID and CSs recognize that guidelines and training on environmental compliance will benefit most Title II partners, and improve the environmental soundness of Title II development activities. Further guidance and clarification of procedures to ensure better furtherance of Regulation 16 will be provided by USAID. Compliance with Regulation 16 may require modifications to project designs and budgets. Cooperating Sponsors should be prepared to amend these as necessary.

If your program activities encompass agricultural and/or infrastructure development, note briefly whether and how environmental impact assessment of any kind was incorporated in the activity design and how environmental impact is currently being monitored.

II. Modifications to Activity Design

A. Follow-Up of FY 1997 Title II Review (if Applicable)

If you have not already done so, please respond to the technical and programmatic concerns raised during the FY 1997 review, as detailed in the review summary cable or FFP's letter of approval. Address the extent to which you have implemented or plan to implement the recommendations made and the resulting budgetary impact. Explain any delays in implementing recommendations.

B. Lessons Learned During Recent Activity Implementation

Based on recent progress and constraints, describe any modifications made in FY 1996 to activity design or implementation, including revisions to objectives, benchmarks, performance indicators, and the implementation schedule. In addition, explain how any modification may affect activity budgets and commodity allocations. Finally, note significant changes in your operating environment, e.g., economic, social or political developments that affected or may continue to affect performance in meeting one or more objectives.

III. Resource Analysis and Requests

(Sections A–D may be attached as an annex)

A. FY 1996 Expenditure Report and Narrative

1. Prepare a comprehensive report of actual expenditures during FY 1996. If possible, report on expenditures by Title II activity. Identify all applicable funding sources, including, for example: Section 202(e); monetization; Cooperating Sponsor contribution; other donors; and other program income such as interest, empty container sales, participant contributions, etc. Report all opening and closing balances by funding source, and compare budgeted to actual line-item expenditures. Amounts should be denominated in U.S. dollars. For local currency line items that have been translated into U.S. dollars, state the exchange rate and the date it was obtained.

2. Provide a brief explanation of significant line-item deviations from the FFP-approved budget. If there was a shortfall in funding (particularly local currency from monetization) during FY 1996, discuss the activities affected, the impact of the shortfall on the achievement of objectives, and how the shortfall was covered. Conversely, if the funds available during FY 1996 exceeded budgeted expenditures, discuss the activities affected, the impact on the achievement of objectives, and how the additional funding was or will be spent.

B. FY 1996 Monetization Pipeline Analysis

For each activity supported by Title II monetization, provide a pipeline analysis of local currency funds including: FY 1996 opening balance of funds from prior year monetizations, including interest; actual funds received from monetization sales during FY 1996; interest earned during FY 1996; total actual expenditure of local currency during FY 1996; closing balance of funds at the end of FY 1996; and the amount of reserve/bridge funding needed to support the activity until the FY 1997 monetization sale takes place. CSs are requested to report this information utilizing the worksheet(s) provided in Attachment 4.

C. FY 1996 Commodity Pipeline Analysis

Attach as an annex the FY 1996 Fourth Quarter Commodity Status and Recipient Status Report (CSR/RSR) and Loss Report, along with a summary of CSR/RSR data for the full FY 1996.

D. FY 1997, 1998 & 1999 Budget Revisions

If changes to the original FY 1997, 1998 or 1999 budgets are required or envisioned, prepare a revised comprehensive budget to serve as a modification to the approved activity. List all funding sources, actual opening balances, estimated line-item expenditures, and estimated closing balances. Also present a table showing revised commodities and tonnages by the Annual Estimate of Requirement's (AER) category for each program activity.

E. Future New Submissions

This section pertains only to DAPs/PAAs ending in FY 1997 and FY 1998:

Briefly discuss plans to submit follow-on Title II proposals for FY 98 or FY 99, including any anticipated changes in activity and/or resource requirements, discussions between your staff and the USAID Mission on planned activities, whether and/or how the activity supports one or more of the objectives under the Mission's strategic plan for the country.

For anticipated new proposals, include a table showing the commodities and tonnages, by AER category for each program activity, along with any Section 202(e) funding, that you plan to request. (This table may be included in an annex.)

[FR Doc. 97–4381 Filed 2–25–97; 8:45 am]
BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–393]

Certain Ion Trap Mass Spectrometers and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed on January 24, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Finnigan Corporation, 355 River Oaks Parkway, San Jose, California 95134. A supplement to the complaint was filed on February 13, 1997. The Complaint, as supplemented, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ion trap mass spectrometers and components thereof, by reason of infringement of claims 1–20 of U.S. Letters Patent 4,540,884, and claims 1 and 12–19 of U.S. Reissue Patent 34,000.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S.

International Trade Commission, on February 20, 1997, *ordered* That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ion trap mass spectrometers and components thereof by reason of infringement of one or more of claims 1–20 of U.S. Letters Patent 4,540,884, or one or more of claims 1, 12–19 of U.S. Reissue Patent 34,000; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Finnigan Corporation, 355 River Oaks Parkway, San Jose, California 95134.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Bruker-Franzen Analytik GmbH, Fahrenheitstrasse 4, D–28359, Bremen 33, Germany

Bruker Instruments, Inc., Manning Park, Fortune Drive, Billerica, Massachusetts 01821

Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, California 94304.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to §§ 201.16(d) and 210.13(a) of the Commission's Rules, 19 C.F.R. 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: February 20, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4729 Filed 2–25–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 701–TA–367 (Final)]

Certain Laminated Hardwood Flooring From Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On February 4, 1997, the Department of Commerce published notice in the Federal Register of a negative final determination of subsidies in connection with the subject investigation (62 F.R. 5201). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR § 207.40(a)), the countervailing duty investigation concerning certain laminated hardwood from Canada (investigation No. 701–TA–367 (Final)) is terminated.

EFFECTIVE DATE: February 4, 1997.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov* or *ftp://ftp.usitc.gov*).

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR § 201.10).

Issued: February 21, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4732 Filed 2–25–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731-TA-741, 742, & 743 (Final)]

Melamine Institutional Dinnerware from China, Indonesia, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that the industry in the United States producing melamine dinnerware for institutional use [2] is materially injured by reason of imports from China, Indonesia, and Taiwan of melamine dinnerware, as defined by the Department of Commerce (Commerce), that have been found by Commerce to be sold in the United States at less than fair value (LTFV), and that are for institutional use.[3] [4]

The Commission further finds that the industry in the United States producing melamine dinnerware for non-institutional use [5] is not materially injured or threatened with material injury, and the establishment of such an industry in the United States is not materially retarded, by reason of LTFV imports of melamine dinnerware from China and Taiwan that are for non-institutional use. The Commission also unanimously determines that subject imports of melamine dinnerware for

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Defined as melamine dinnerware that is intended for use by institutions such as schools, hospitals, cafeterias, restaurants, nursing homes, etc.

[3] In these investigations, Commerce has defined a single class or kind of imported merchandise, consisting of all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays, but not including flatware products such as knives, forks, and spoons) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch. Melamine institutional dinnerware is provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States.

[4] Commissioner Crawford dissenting.

[5] Defined as melamine dinnerware that is generally sold to the retail sector and is intended for use by households.

non-institutional use from Indonesia are negligible.

Background

The Commission instituted these investigations effective February 6, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by the American Melamine Institutional Tableware Association (AMITA).[6] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of melamine institutional dinnerware from China, Indonesia, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 11, 1996 (61 FR 47957). The hearing was held in Washington, DC, on January 9, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 18, 1997. The views of the Commission are contained in USITC Publication 3016 (February 1997), entitled ''Melamine Institutional Dinnerware from China, Indonesia, and Taiwan: Investigations Nos. 731–TA–741, 742, and 743 (Final).''

Issued: February 19, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4728 Filed 2–25–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission.

ACTION: Publication of monitoring reports in 1997.

EFFECTIVE DATE: February 18, 1997.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty (202–205–3324) or Lowell Grant (202–205–3312), Agriculture and Forest Products Division, Office of Industries, or William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on these studies by contacting the Commission's TDD terminal on (202–205–1810).

Background

Section 316 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3381) directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009, as if a request for such monitoring had been made under section 202(d) of the Trade Act of 1974 (19 U.S.C. 2252(d)), for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974. In response, the Commission instituted Investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 F.R. 1763, January 12, 1994) and Investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 F.R. 1762, January 12, 1994).

Although section 316 of the NAFTA Implementation Act does not require the Commission to publish reports on the results of its monitoring activities, the Commission has endeavored to do so in those years in which it was not conducting an investigation under other statutory authority with respect to such products. Thus, no monitoring reports were published in 1996 when the Commission conducted Investigation No. TA–201–66, Fresh Tomatoes and Bell Peppers (61 F.R. 13875, March 28, 1996), under section 202(b) of the Trade Act of 1974 (19 U.S.C. 2252(b)); and antidumping Investigation No. 731–TA 47 (Preliminary), Fresh Tomatoes from Mexico (61 F.R. 15968, April 10, 1996), under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)). The Commission made a negative injury determination in the section 201 investigation on July 2, 1996; the Commission's antidumping investigation was suspended, effective November 1, 1996, following the signing of a suspension agreement.

The Commission will publish monitoring reports, containing data for both 1996 and 1997, in September 1997.

By order of the Commission.

Issued: February 21, 1997

Donna R. Koehnke,

Secretary.

[FR Doc. 97–4733 Filed 2–25–97; 8:45 am]

BILLING CODE 7020–02–P

[6] The members of AMITA are Carlisle Food Service Products (formerly known as Continental/SiLite International Co.), Oklahoma City, OK; Lexington United Corp. (National Plastics Corp.), Port Gibson, MS; and Plastics Manufacturing Co. (Sun Coast Industries, Inc.), Dallas, TX.

DEPARTMENT OF LABOR

Employment and Training Administration

American Olean Tile Company, Incorporated A/K/A Dal Tile Company; TA–W–31, 870 Lansdale, Pennsylvania, Et. Al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 26, 1996, applicable to all workers of American Olean Tile Company, Incorporated, located in Lansdale, Pennsylvania. The worker certification was subsequently amended to correct the impact date and to include worker separations that occurred at various operating facilities of American Olean Tile Company in the United States. The most recent amendment was published in the Federal Register on June 6, 1996 (61 FR 28898).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that Dal Tile Company merged with American Olean Tile Company prior to the Department's worker certification. Based on this information, the Department is amending the worker certification to reflect that American Olean Tile is also known as Dal Tile Company. The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of tile.

The amended notice applicable to TA–W–31, 870 is hereby issued as follows:

All workers of American Olean Tile Company, Incorporated, also known as Dal Tile Company, Lansdale, Pennsylvania (TA–W–31, 870), who became totally or partially separated from employment on or after February 15, 1996; and all workers of American Olean Tile Company, Incorporated, also known as Dal Tile Company, at the various locations cited below, who became totally or partially separated from employment on or after January 24, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–31,870A Alabama
TA–W–31,870B Arizona
TA–W–31,870C California

TA–W–31,870D Connecticut
TA–W–31,870E Florida
TA–W–31,870F Georgia
TA–W–31,870G Illinois
TA–W–31,870H Indiana
TA–W–31,870I Kentucky
TA–W–31,870J Louisiana
TA–W–31,870K Maryland
TA–W–31,870L Massachusetts
TA–W–31,870M Minnesota
TA–W–31,870N Missouri
TA–W–31,870O Nevada
TA–W–31,870P New Jersey
TA–W–31,870Q New York
TA–W–31,870R Ohio
TA–W–31,870S Oklahoma
TA–W–31,870T Pennsylvania (except Lansdale)
TA–W–31,870U Tennessee
TA–W–31,870V Texas
TA–W–31,870W Utah
TA–W–31,870X Virginia
TA–W–31,870Y Washington
TA–W–31,870Z Wisconsin

Signed at Washington, D.C. this 6th day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4723 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

TA–W–31,733D, Boise Cascade Corp. Timber and Wood Products Division Boise, Idaho; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 22, 1996, applicable to all workers of Boise Cascade Corp. located in Boise, Idaho. The notice was published in the Federal Register on November 6, 1996 (61 FR 57454).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that some workers at the Boise, Idaho location support production of products other than lumber and plywood produced at the certified plants (TA–W–31,733 and TA–W–31,733A–C). Accordingly, the coverage should be limited to those workers in the Timber and Wood Products Division. The Department is again amending the worker certification to provide coverage only to those support service workers of Boise Cascade Corp., Timber and Wood Products in Boise, Idaho.

The intent of the Department's certification is to include only those workers of Boise Cascade who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,733D is hereby issued as follows:

All workers of Boise Cascade Corp., Timber and Wood Products Division, Boise, Idaho who became totally or partially separated from employment on or after December 7, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 12th day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4726 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–33,008]

Dudley Apparel Dudley, Georgia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 1996 in response to a worker petition which was filed on behalf of workers at Dudley Apparel, Dudley, Georgia.

This case is being terminated because no information is available from petitioners or company official to complete the necessary investigation. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 11th day of February, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4722 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

Frank H. Fleer Corporation, TA–W–32, 435 Philadelphia, Pennsylvania, and TA–W–32,435A Mt. Laurel, New Jersey; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 26, 1996, applicable to workers of Frank H. Fleer Corporation located in Philadelphia, Pennsylvania. The notice was published in the Federal Register on August 26, 1996 (61 FR 43791).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at the subject firm's Mt. Laurel, New Jersey location. The Mt. Laurel facility is headquarters and distribution for the cards and confectionery that was produced at the Philadelphia plant of the subject firm.

The intent of the Department's certification is to include all workers of Frank H. Fleer Corporation who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Frank H. Fleer in Mt. Laurel, New Jersey.

The amended notice applicable to TA–W–32,435 is hereby issued as follows:

All workers of Frank H. Fleer Corporation, Philadelphia, Pennsylvania (TA–W–32,435) and Mt. Laurel, New Jersey (TA–W–32,435A), who became totally or partially separated from employment on or after May 23, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 21 day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4724 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

TA–W–33,164, Frigidaire Home Products Greenville, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 10, 1997, in response to a worker petition which was filed on February 10, 1997 on behalf of workers at Frigidaire Home Products, Greenville, Michigan.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–33113). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 11th day of February, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 97–4727 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

TA–W–32, 238, Vishay-Sprague Incorporated Sanford, Maine; Including Leased Workers of Manpower Technical Portland, Maine; and Leased Workers of Manpower Springvale, Maine; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 15, 1996, applicable to all workers of Vishay-Sprague Incorporated located in Sanford, Main. The notice was published in the Federal Register on June 6, 1996 (61 FR 28900).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some employees of Manpower Technical, Portland, Maine and Manpower, Springvale, Maine were engaged in employment related to the production of solid tantalum capacitors produced by Vishay-Sprague in Sanford, Maine. Worker separations occurred at Manpower Technical and Manpower as a result of worker separations at Vishay-Sprague.

Based on these findings, the Department is amending the certification to include workers of Manpower Technical, Portland, Maine and Manpower, Springvale, Maine leased to Vishay-Sprague. The intent of the Department's certification is to include all workers of Vishay-Sprague adversely affected by imports.

The amended notice applicable to TA–W–32, 238 is hereby issued as follows:

All workers of Vishay-Sprague Incorporated, Sanford, Maine engaged in employment related to the production of solid tantalum capacitors; and leased workers of Manpower Technical, Portland, Maine and Manpower, Springvale, Maine engaged in employment related to the production of solid tantalum capacitors for Vishay-Sprague Incorporated, Sanford, Maine, who became totally or partially separated from employment on or after April 3, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of February 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–4725 Filed 2–25–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (97–019)]

Notice of Agency Report Forms Under OMB Review

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made submission. Accordingly, this notice announces NASA's plans to request data from grant and agreement recipients regarding the manner in which services are or will be provided by the program, the population eligible to be served by race, color, national origin, sex, disability and age, data regarding covered employment including use of bilingual public contact employees where necessary to permit effective participation by beneficiaries unable to speak or understand English, the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination, the present or proposed membership by race, color, national origin, sex, disability and age in any planning or advisory body which is an integral part of the program, and, where relocation is involved, the requirements and steps used or proposed to guard against impact on persons on the basis of race, color, national origin, disability, sex or age. This information is critical to the assessment of recipient compliance with civil right laws and NASA regulations prohibiting discrimination on the basis of race, color, national origin, disability, sex, and age in Federally assisted programs.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before April 28, 1997.

ADDRESSES: All comments should be addressed to Mr. James A. Westbrooks, Office of Equal Opportunity Programs, Code EI, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Dr. Marie K. Tynan, Office of the Chief Information Officer, (202) 358–1371.

Reports: NASA Form 1206.

Title: Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs.

OMB Number: None Assigned.

Type of Review: New Collection.

Need and Uses: NASA grant and agreement recipients will be asked to provide the requested data prior to receiving funds or any other form of Federal assistance on any new grant or agreement. This information is critical to NASA's ability to evaluate compliance by recipients of Federal assistance with NASA regulations and with NASA's ability to meet Justice Department requirements under Executive Order 12250.

Affected Public: Non-profit, businesses or other for-profit and Educational Institutions.

Estimated Number of Respondents: 814.

Responses Per Respondent: 1.

Estimated Annual Responses: 160.

Estimated Hours Per Request: 1.

Estimated Annual Burden Hours: 160.

Frequency of Report: Every five years.

Dated: February 18, 1997.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–4651 Filed 2–25–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice: 97–020]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received by March 28, 1997.

ADDRESSES: All comments should be addressed to Mr. Philip T. Smith, National Aeronautics and Space Administration, Code BFZ, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Dr. Marie K. Tynan, Office of the Chief Information Officer, (202) 358–1371.

Title: NASA contractor Financial Management Reports.

Need and Uses: Contractors must report planned and actual costs on

NASA Forms 533M/533Q so NASA can plan, monitor, and control program/project resources, evaluate contractor performance, and accurately accrue cost in the accounting system and financial statements.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of respondents: 900.

Responses Per Respondent: 12.

Annual Responses: 10,800.

Hours Per Request: 9.

Annual Burden Hours: 97,200.

Frequency of Report: Monthly and quarterly.

Dated: February 18, 1997.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–4652 Filed 2–25–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice: 97–021]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received by March 28, 1997.

ADDRESSES: All comments should be addressed to Mr. Bill Comer, National Aeronautics and Space Administration, Code QS, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Dr. Marie K. Tynan, Office of the Chief Information Officer, (202) 358–1371.

Title: NASA Safety Reporting System (NSRS).

Need and Uses: The NSRS form may be used by NASA employees, NASA contractor employees, and others for voluntary and confidential reporting to an independent agent any safety concerns or hazards pertaining to any NASA program or project.

Affected Public: Federal Government, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government, Individuals or households.

Estimated Number of Respondents: 75.

Responses Per Respondent: 1.

Estimated Annual Responses: 19.

Estimated Hours Per Request: .25.

Estimated Annual Burden Hours: 19.

Frequency of Report: As required.

Dated: February 18, 1997.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–4653 Filed 2–25–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice 97–018]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Systems Research Group, Inc. of Colorado Springs, CO 80915, has applied for an exclusive license to practice the inventions described in NASA Case No. MSC–21941–1, entitled ''Control System for Prosthetic Devices,'' NASA Case No. MSC–21941–2, entitled ''Control System for Prosthetic Devices,'' and NASA Case No. MSC–21941–3, entitled ''Control Method for Prosthetic Devices.'' Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATES: Responses to this notice must be received by April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Mail Stop HA, Houston, TX 77058, telephone (281) 483–1003.

Dated: February 14, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–4650 Filed 2–25–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted a preliminarily annual fee rate of 0.5% (.005) for calendar year 1997. This rate shall apply to all assessable gross revenues (tier 1 and tier 2) from each class II gaming operation regulated by the Commission.

FOR FURTHER INFORMATION CONTACT: Cindy Altimus, National Indian Gaming Commission, 1441 L Street, NW, 9th Floor, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating class II gaming on Indian lands.

The regulations of the Commission (25 CFR part 500) provide for a system of fee assessment and payment that is self-administered by the class II gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the rate being adopted today are effective for calendar year 1997. Therefore, all Class II gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission before the end of calendar year 1997 (December 31).

Ada Deer,

Acting Chair, National Indian Gaming Commission.

[FR Doc. 97–4711 Filed 2–25–97; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel In Biological Sciences (1754).

Date and Time: Friday, March 14, 1997; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation (NSF), Rm. 365, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Marcia Steinberg, Program Director, Collaborative Research at Undergraduate Institutions (C–RUI), National Science Foundation, Rm. 655, 4201 Wilson Blvd., Arlington, VA 22230, Telephone 703/306–1443.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: to review and evaluate proposals for Collaborative Research at Undergraduate Institutions as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4707 Filed 2–25–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences; (1754).

Date and Time: March 19, 1997 (7:30PM to 9:30PM) and March 20, 1997 (8:30AM to 5PM).

Place: (March 19) Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779; (March 20) Biology Building, Brookhaven National Laboratory, Upton, NY, 11973.

Type of Meeting: Closed.

Contact Person: Dr. Gerald Selzer, Program Director, Division of Biological Infrastructure (DBI), Room 615, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning BIO Database Activities projects.

Agenda: To review and evaluate progress report and proposal for future activities provided by the Protein Data Bank project.

Reason for Closing: The report being reviewed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the report. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 21, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4712 Filed 2–25–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: March 16, 1997: 7:00 to 9:00 p.m., March 17, 1997: 8:00 a.m. to 5:00 p.m., March 18, 1997: 8:00 a.m. to 4:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 310, 320, 380, 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lola Rogers, Program Director, 4201 Wilson Blvd., Suite 815, Arlington, VA 22230. Telephone: 703/306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Implementation and Development Projects for Women and Girls Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–4710 Filed 2–25–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric 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 Nos. DPR–53 and DPR–69 issued to Baltimore Gas and Electric Company, for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendment revises the Technical Specifications (TSs) to reduce the minimum Reactor Coolant System (RCS) total flow rate from 370,000 gpm to 340,000 gpm; reduce the Reactor Protective Instrumentation trip setpoint for Reactor Coolant Flow—Low from greater than or equal to 95% to greater than or equal to 92% of design reactor coolant flow; adjust the reactor core thermal margin safety limit lines to reflect the reduced RCS flow rate; and reduce the lift setting range for the eight Main Steam Safety Valves (MSSVs) with the highest allowable lift setting from the current range of 935 to 1065 psig to a more restrictive range of 935 to 1050 psig. In addition to the changes to the TSs necessary to support an increased number of plugged SG tubes, reanalysis of the accident analyses affected by this change identified an Unreviewed Safety Question (USQ) associated with these changes. The USQ results from the determination that the Main Steam Line Break (MSLB) and Seized Rotor Event analyses involve an increased percentage of failed fuel cladding. Finally, three reanalyzed events (MSLB, Loss of Coolant Flow, and Boron Dilution) will require Nuclear Regulatory Commission (NRC) approval due to changes to the methodology or assumptions used to analyze these events.

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. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment defines changes to the operating licenses for Calvert Cliffs Nuclear Power Plant, Units 1 and 2, necessary to support increased steam generator tube plugging. The effects of increased steam generator tube plugging include reduced steam generator pressure and RCS flow rate, and increased core outlet (hot leg) temperature. The Technical Specification changes necessary to account for these effects are reducing the minimum RCS total flow rate from 370,000 gpm to 340,000 gpm; reducing the Limiting Safety System Setting for reactor coolant flow trip function from greater than or equal to 95% to greater than or equal to 92% of design reactor coolant flow; revising the Reactor Core Thermal Safety Limit lines to indicate operation at the lower reactor coolant flow rate; and decreasing the maximum allowable lift settings for the eight highest set Main

Steam Safety Valves from 1065 psig to 1050 psig. The Design Basis Events (DBEs) affected by these changes were reanalyzed to determine if the effects of increased steam generator tube plugging, and the associated changes to the Technical Specifications, could result in exceeding the acceptance criteria applicable to each of these events. Although it was determined that the DBE acceptance criteria would not be exceeded as a result of increased steam generator tube plugging, the analyses for the Main Steam Line Break and Seized Rotor Events indicated an increased percentage of fuel cladding failure as a result of the lower RCS total flow rate; therefore, it was determined that this activity involves a USQ.

Technical Specification 2.1.1 will be changed to establish more restrictive limits on core thermal power and reflect a lower minimum RCS flow of 340,000 gpm. Making the core thermal power limits more restrictive does not initiate a change to plant conditions that would affect other plant components. Therefore, the probability of a previously evaluated accident is not significantly increased. Additionally, the Limiting Conditions for Operation and Limiting Safety System Settings based on these limits remain adequately conservative or will be changed in the Core Operating Limits Report, as appropriate. Therefore, the consequences of a previously evaluated accident are not significantly increased.

Technical Specification 2.2 will be changed to reduce the Reactor Coolant Flow—Low reactor trip setpoint from [greater than or equal to] 95% to [greater than or equal to] 92%, thereby providing additional operating margin to this trip setpoint and the associated pre-trip alarm. Reducing this setpoint does not initiate a change to plant conditions that would affect other plant components. Therefore, the probability of a previously evaluated accident is not significantly increased.

As demonstrated by the revised Loss of Coolant Flow analysis, the proposed Reactor Coolant Flow—Low reactor trip setpoint will continue to provide adequate core protection. A trip setpoint of [greater than or equal to] 92% ensures fuel is not damaged, and the site boundary dose remains a small fraction of the 10 CFR Part 100 guidelines. Therefore, the consequences of a previously evaluated accident are not significantly increased.

Technical Specification 3.2.5.c will be changed to reduce the minimum RCS total flow rate from 370,000 gpm to 340,000 gpm. This change reduces the core heat removal rate and slightly increases the core outlet and average coolant temperatures. This change involves a USQ, as the Main Steam Line Break and Seized Rotor Event analyses have indicated an increase in the number of failed fuel pins during these events as a result of reducing the initial RCS flow rate. The probability of malfunction of equipment important to safety (i.e., fuel pin cladding) during these accidents increases. However, this malfunction is not an accident initiator. Rather, it is a consequence of an accident. Therefore, the probability of a previously evaluated accident is not significantly increased. The consequences of the Main Steam Line Break and Seized Rotor Events are not significantly increased, as the results of the analyses of these events are within the current acceptance criteria established by the NRC.

Analyses and evaluations have been performed to demonstrate that the new flow and temperature conditions are acceptable:

Fuel and core performance remain within acceptable limits. Analysis and evaluation of fuel mechanical design, core physics, parameters, fuel pin performance, fuel assembly thermal/hydraulic performance, and fuel pin corrosion all demonstrate acceptable results.

The effect of the slightly elevated core outlet and average coolant temperature on the structural integrity of the RCS is acceptable. The RCS penetration inspection program and the steam generator tube inspection program will continue to identify and repair or isolate Alloy 600 cracks prior to inservice failure of these components. The stress analysis for the reactor vessel and piping remain bounding.

The performance of control systems (i.e., feedwater, pressurizer level, and pressurizer pressure) will maintain RCS and steam generator parameters within appropriate limits by periodic adjustment, as necessary. Reactor coolant pump operation will be maintained within acceptable limits by periodic adjustment of the operating curves.

Therefore, the probability of a previously evaluated accident is not significantly increased.

Analyses and evaluations of the DBEs have been performed demonstrating that the NRC acceptance criteria for these events are met. The revised analyses and evaluations consider reduced RCS flow, increased reactor coolant temperature, and increased steam generator tube plugging conditions.

The results of analyses and evaluations of the Postulated Accidents demonstrate that the site boundary dose is within 10 CFR Part 100 guidelines and the core geometry remains coolable. Loss-of-Coolant Accident analysis results meet the acceptance criteria stipulated in 10 CFR 50.46(b).

The results of analyses and evaluations of Anticipated Operational Occurrences demonstrate that fuel parameters do not exceed the specified acceptable fuel design limits and site boundary dose is a small fraction of 10 CFR Part 100 guidelines. Primary and secondary system pressure remain below the pressure upset limits for the RCS and steam generators, respectively.

Therefore, the consequences of a previously evaluated accident are not significantly increased.

Technical Specification 4.7.1.1. will be changed to reduce the maximum allowable lift setting for the eight Main Steam Safety Valves with the highest lift setpoint. This change will place more restrictive limits on the allowable range of lift settings for these eight valves. The allowable range of lift settings for the proposed change is also allowed by current Technical Specification. Therefore, the probability of a previously evaluated accident occurring is not significantly increased.

The revised safety analyses will credit the highest lift setting for these eight valves as being 1050 psig. The more restrictive limit on the maximum lift setting is required in order to make this Technical Specification consistent with the revised safety analyses. Analyses performed assuming the proposed maximum lift setting for these valves demonstrates that secondary system pressure does not exceed 110% of the system design pressure. Therefore, the consequences of a previously evaluated accident are not significantly increased.

Therefore, operation of the facility in accordance with this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed amendment revises limiting parameters to assure safe operation commensurate with the effects of steam generator tube plugging, and will not change the modes of operation defined in the facility license. The analysis of transients associated with steam generator malfunctions are part of the design and licensing bases. This change does not add any new equipment, modify any interfaces with any existing equipment, or change the equipments's function, or the method of operating the equipment. The proposed change does not change plant conditions in a manner which could affect other plant components. Reactor core, RCS, and steam generator parameters remain within appropriate design limits during normal operation.

Therefore, the proposed change could not cause any existing equipment to become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margins of safety associated with this change are defined in the fuel and core-related analyses, the Alloy 600 stress corrosion cracking evaluation, the RCS structural evaluation, the operational evaluation, and in each of the transient and accident analyses affected by the increased steam generator tube plugging.

Reanalysis of the fuel and core-related analyses for fuel mechanical design, core physics, fuel performance, thermal hydraulics, and fuel rod corrosion verified that the fuel and core performance will remain within acceptable limits and will be bounded by the current assumptions for fuel performance in the transient and accident analyses. The Alloy 600 RCS penetration inspection program and the steam generator tube inspection program will continue to find and repair Alloy 600 cracks at the slightly elevated core exit temperature prior to any postulated inservice failure of these components. The stress analyses performed for the reactor vessel and piping remain bounding for the slightly elevated core exit

temperature. Additionally, the performance of non-safety-related control systems remains adequate to maintain RCS and steam generator parameters within appropriate operating limits. Therefore, the margins of safety associated with the physical and operational effects of this change will not be significantly reduced.

An evaluation of the affected DBEs confirmed that the established acceptance criteria for specified acceptable fuel design limits, primary and secondary system over-pressurization, 10 CFR 50.46(b), Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors, and potential radiation dose during accidents have been completed in support of this license amendment request. The evaluation concludes that, when considering the proposed Limiting Safety System Setting for the Reactor Coolant Flow—Low trip, Limiting Conditions for Operation for RCS total flow rate, and reduced lift settings for eight Main Steam Safety Valves per unit, all applicable acceptance limits are met. Furthermore, the USQ resulting from the reduced RCS total flow rate does not represent a reduction in the margin of safety, as the site boundary dose calculated in the affected DBE analyses is within the current established radiation dose limits and the core geometry remains coolable. Therefore, the margins of safety associated with the transient and accident analyses affected by this change will not be significantly reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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 28, 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 Calvert County Library, Prince Frederick, Maryland 20678. 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 S. Singh Bajwa: 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 Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC, 20037 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 31, 1997, as supplemented February 13, 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 Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 20th day of February 1997.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4701 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–331]

IES Utilities Inc., Central Iowa Power Cooperative, Corn Belt Power Cooperative, Duane Arnold Energy Center; Notice of Consideration of Approval of Application Regarding Merger

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving under 10 CFR 50.80 an application regarding the proposed merger involving IES Industries (IESI), the parent company of IES Utilities Inc. (IESU). IESU is the licensee for the Duane Arnold Energy Center (DAEC). By letter dated September 27, 1996, IESU informed the Commission that under a merger agreement among IESI, WPL Holdings, and Interstate Power Corporation, IESI will merge with and into a WPL Holdings (WPLH), and Interstate Power Corporation will become a subsidiary of WPLH. WPLH will be renamed Interstate Energy Corporation (IEC) of which IESU would become a wholly-owned subsidiary. IESU will remain the holder of its license for DAEC. Under the merger agreement, current stockholders of IESI, WPLH, and IPC will become stockholders of IEC pursuant to a formula stipulated in the merger agreement. IESU requested the Commission's approval regarding the proposed transactions to the extent they effect an indirect transfer of control of the DAEC license, pursuant to 10 CFR 50.80. IESU would remain an electric utility as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale, subject to the rate regulation of the Iowa Utilities Board and the Federal Energy Regulatory Commission.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the licensee's letter dated September 27, 1996, with the following exhibits: (A) Information to support the request for the Commission's consent. (B) A copy of the merger agreement executed among IES Industries Inc., WPL Holdings, Inc., and Interstate Power Corporation. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located in the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, IA 52401.

Dated at Rockville, Maryland, this 19th day of February 1997.

Glenn B. Kelly,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4700 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

Toledo Edison Company Centerior Service Company; and the Cleveland Electric Illuminating Company; Davis-Besse Nuclear Power Station, Unit No. 1 Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–346]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

The proposed amendment would revise Technical Specification (TS) Section 3/4.5.2, ''Emergency Core Cooling Systems, ECCS Subsystems—$T_{avg} \geq 280$ °F.'' Surveillance requirement (SR) 4.5.2.f would be modified to state that opening and closing of the inspection port on the watertight enclosure for the decay heat valve pit would not require this surveillance procedure to be performed. The applicable TS bases would also be changed.

The licensee's submittal is being processed as an exigent TS amendment request pursuant to 10 CFR 50.91(a)(6), as a followup to the Notice of Enforcement Discretion (NOED) issued by the Commission on February 12, 1997.

The NOED was issued under Criteria 1(a) of NUREG–1600, to avoid undesirable transients as a result of forcing compliance with a license condition and, thus, to minimize potential safety consequences and operational risks.

The licensee discovered that SR 4.5.2.f could be interpreted to require a leak test after opening and subsequent closing of the valve pit inspection port, and that the port had been opened since the last time that the SR had been performed. Because the SR had been missed, the licensee entered TS 3.0.3, which requires that the plant be shut down, and TS 4.0.3, which allows a 24-hour delay in the shutdown so that the missed SR can be performed. The licensee determined that the SR could not be performed at power, and initiated a plant shutdown in accordance with TS 3.0.3. The licensee then requested the Commission to exercise enforcement discretion, and, consistent with Commission policy, submitted the subject TS amendment request 2 days later.

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.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine 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:

Toledo Edison had reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit 1 in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the initiators regarding the large break Loss-of-Coolant Accident (LOCA) are not affected by the proposed change. Revising Surveillance Requirement 4.5.2.f has no bearing on initiating an accident previously evaluated. The flow path through the decay heat drop line also is not an accident initiator.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not alter the source term, containment isolation, allowable radiological releases, or invalidate the assumptions used in evaluating radiological releases. Therefore, the radiological consequences of all accidents presented in the DBNPS Updated Safety Analysis Report (USAR) are unchanged.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the operability requirements of Decay Heat Removal (DHR) System isolation valves DH–11 and DH–12 will continue to be adequately addressed by Surveillance Requirement 4.5.2.f. The plant will be operated in the same way as before, and no different accident initiators or failure mechanism are introduced by the proposed change. The inspection port's Kamlok coupling is included as part of the watertight enclosure vacuum leakage rate test to ensure its leak tightness. In addition, the proposed change adds a new stipulation to Surveillance Requirement 4.5.2.f that after its use, the inspection port must be verified as closed in its correct position. Thus, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Not involve a significant reduction in a margin of safety because the proposed change does not involve any new changes to the initial conditions contributing to accident severity or consequences. The inspection port's Kamlok coupling is included as part of the watertight enclosure vacuum leakage rate test to ensure its leak tightness. In addition, the proposed change adds a new stipulation to Surveillance Requirement 4.5.2.f that after its use, the inspection port must be verified as closed in its correct position. The design of the Kamlok coupling provides for quick and easy access to the inspection port, and quick and easy closure of the inspection port upon completion of inspection activities.

Consequently there are no reductions 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 14 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 14-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 14-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. 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 28, 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 University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606. 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 a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, 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 the Director, Project Directorate III–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001: 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 Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, 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 February 14, 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 University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 20th day of February 1997.

For the Nuclear Regulatory Commission.

Allen G. Hansen,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4703 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

Safety-Conscious Work Environment

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering several strategies in addressing the need for its licensees to establish and maintain a safety-conscious work environment. As discussed herein, the Commission is evaluating the development of a standardized approach that would (1) require licensees to establish and maintain a safety-conscious work environment with clearly defined attributes; (2) establish certain indicators that may be monitored and that, when considered collectively, may provide evidence of an emerging adverse trend; and (3) outline specific remedial actions that the Commission may require when it determines that a particular licensee has failed to establish or maintain a safety-conscious work environment. Before proceeding further, the NRC is seeking comments and suggestions on the various strategies being considered.

DATES: The comment period expires May 27, 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, Division of

Freedom of Information and Publication Services, 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.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2741.

SUPPLEMENTARY INFORMATION:

I. Background

In May 1996, the Commission issued a policy statement on the ''Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation'' [FR 24336]. This policy statement had first been published in draft in February 1995 [FR 7592], and was based on modified recommendations of the Allegation Review Team report published as NUREG–1499. The basic thrust of the policy statement was to clarify the

* * * Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their management and the NRC without fear of retaliation.

The Commission emphasized that problems in the work environment are most effectively prevented, identified, and resolved from within the licensee's organization, rather than by government or other outside involvement. The points of focus in the policy statement—effective processes for identifying and resolving concerns, improvements in contractor awareness, senior licensee management involvement in resolving allegations of harassment and intimidation (H&I), and employees' responsibilities in raising safety concerns—were considered generally applicable to all licensees and contractors.

While the philosophy and message of the policy statement continue to be appropriate, the findings of the Millstone Independent Review Group (MIRG) and compilation of industry-wide allegation data suggest that not all licensees are successful in maintaining a safety-conscious work environment as described in the policy statement. As discussed in NUREG–1499,

the perception of discrimination, as viewed by those involved and other employees, may be more important than whether discrimination actually occurred in setting the tone for the work environment.

When this perception becomes widespread in a licensee's organization, it becomes exceedingly difficult for licensee management (1) to obtain the cooperation of their employees in identifying and eliminating problems adversely affecting the safety-conscious work environment, (2) to reverse the perception that raising safety concerns may cause retaliation (or that management does not welcome concerns being raised), and (3) to regain the trust and confidence of the workforce. Experience at several NRC licensed facilities suggests that additional regulatory actions may be warranted when there is evidence that the licensee may not be maintaining a safety-conscious work environment.

II. Discussion of Using a Standardized Approach to This Issue

The Commission believes that the NRC should focus more attention on, and, if possible, devise additional mechanisms to identify, the emergence of adverse trends in licensees' abilities to maintain a safety-conscious work environment.[1] While identifying these emerging trends is a difficult task, the Commission believes that the effort required will be much less than that required in ''turning around'' a facility where the safety-conscious work environment has already deteriorated. Moreover, if indicators can be identified that, when monitored, will provide a more timely, reliable alert to the NRC of emerging problems in a licensee's safety-conscious work environment, the Commission believes that appropriate intervention will result in a significant contribution to safety and will be well worth the effort.

Evaluating the safety consciousness of a licensee's work environment is highly subjective, and achieving reliability in such an evaluation requires careful judgment. Any one piece of data (e.g., a relatively high number of allegations made to the NRC from a given facility) can be ambiguously interpreted, and focusing on individual data to the exclusion of other information can be misleading. As discussed below, the Commission believes that judgments made in this area should be the result of periodic reviews by senior NRC management. In addition, the analyses made in this area may become more reliable and consistent if the Commission clarifies and promotes (1) a standard definition and attributes of a safety-conscious work environment; (2) criteria to be considered as indicators that a licensee's safety-conscious work environment may be deteriorating; and (3) NRC actions to be considered in dealing with situations where these criteria are not met (i.e., where signs indicate the emergence of an adverse trend).

As used in this context, a safety-conscious work environment is defined in the Commission's May 1996 Policy Statement as a work environment in which employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees. Attributes of a safety-conscious work environment include (1) a management attitude that promotes employee involvement and confidence in raising and resolving concerns; (2) a clearly communicated management policy that safety has the utmost priority, overriding, if necessary, the demands of production and project schedules; (3) a strong, independent quality assurance organization and program; (4) a training program that encourages a positive attitude toward safety; and (5) a safety ethic at all levels that is characterized by an inherently questioning attitude, attention to detail, prevention of complacency, a commitment to excellence, and personal accountability in safety matters.

Departures from such a safety-conscious work environment are not always easy to detect. However, certain indicators, particularly when considered collectively, may be viewed as providing evidence of an emerging adverse trend. These include: (1) Adverse findings by the Department of Labor (DOL) or NRC's Office of Investigation (OI) concluding that discrimination has occurred against employees for engaging in protected activity; (2) in particular, a DOL or OI finding that a hostile work environment existed for a licensee employee, or that senior licensee management was involved in the discrimination; (3) a significant increase in the rate (or a sustained high number) of complaints to the NRC that licensee employees are being subjected to harassment and intimidation (H&I); (4) a significant increase (or a sustained high number) of technical allegations made to the NRC, particularly if accompanied by low usage or a decrease in use of the licensee's employee concern program or other licensee channels for reporting concerns; and (5) other indications that

[1] In NUREG–1499, the Allegation Review Team provided an analysis of indications that a licensee's safety-conscious work environment may be deteriorating. Similar discussions and additional analysis appear in the September 1996 report of the Millstone Independent Review Group (MIRG).

the licensee's employee concerns program or other programs for identifying and resolving problems are ineffective. Such indications might include: delays in or absence of feedback for concerns raised to the ECP; breaches of confidentiality for concerns raised to the ECP; the lack of effective evaluation, follow-up, or corrective action for concerns raised to the ECP or findings made by the licensee's QA organization; overall licensee ineffectiveness in identifying safety issues; the occurrence of repetitive or willful violations; a licensee emphasis on cost-cutting measures at the expense of safety considerations; and/or poor communication mechanisms within or among licensee groups. In some cases, these indications may be identified during routine inspections.

The licensee's departure from a safety-conscious work environment can develop gradually over a period of years and with varying degrees of licensee management awareness. As stated above, any one of the symptoms given in the preceding paragraph, taken by itself, may not indicate deterioration in the licensee's overall safety-conscious work environment, particularly if not accompanied by overall problems in operational or safety performance.[2] Related judgments as to the need for NRC intervention should not be made in isolation. The Commission believes that such judgments, as well as the ensuing decisions on what action would be appropriate in a given situation, would be appropriate topics of discussion at the NRC's periodic Senior Management Meetings.

Once the judgment is made that a licensee's safety-conscious work environment has deteriorated, the Commission's choice of action would be based on the symptoms that led to that judgment. Under this approach, however, the Commission would identify and promote standard options for agency action rather than treating each licensee situation on a case-by-case basis. Those options might include (but would not be limited to): (1) Requiring the licensee to establish a formal employee concerns program (if one does not already exist); (2) ordering the licensee to conduct an independent survey of the environment for raising concerns, with periodic follow-up surveys to monitor progress; (3) ordering the licensee to establish an independent group for oversight of maintaining a safety-conscious work environment (similar to that prescribed by the October 24, 1996, Millstone order); or (4) mandating that the licensee establish a ''holding period'' policy to be applied in cases where an employee complains of being discriminated against for engaging in protected activity (additional discussion of the holding period concept is given below).

III. Establishing a Regulation on Safety-Conscious Work Environment

One strategy to standardizing the Commission's approach to this area would be to initiate a rulemaking process, in which the regulations of 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' would be amended. The possible value of promulgating this strategy as a regulation is as follows. First, it would codify the safety-conscious work environment as a requirement, clearly linked to the licensee's safety ethic and to the overall fitness of the licensee to operate the facility. Second, such a regulation could successfully differentiate between licensees who perform well in this area and those who are cause for concern, in that prescriptive requirements would only be remedial (i.e., prescribed for those licensees who fail to establish and maintain a sufficiently safety-conscious work environment on their own efforts). Third, for those cases requiring Commission intervention in the form of issuing orders, the presence of a standardized process (i.e., as codified in a regulation or suggested in a policy statement) may result in less litigation than would result if such orders were devised and issued case by case in the absence of such a standardized approach.[3]

The Commission's experience indicates that licensees may successfully use differing methods in achieving a safety-conscious work environment, and what may be necessary for some licensees is unnecessary for others. Under the approach discussed herein, however, a regulation could be written such that, while the Commission is prepared to take decisive action where licensees have been unsuccessful, these actions are not invoked so long as licensees meet the basic criteria of a safety-conscious work environment.

Finally, while such a regulation might provide additional standardization and consistency where Commission action is necessary, the primary purpose would be to focus the licensee's attention in this area and reduce the need for Commission involvement in directing licensees' actions in this area. The intended effect of this rule would be for licensees (1) to become more aware of the importance the Commission places on establishing and maintaining a safety-conscious work environment, (2) to become more sensitive to indications of adverse trends emerging at their own facilities, and (3) to become more effective in taking actions to correct such trends and preserve the safety-conscious work environment before it deteriorates to a point that demands Commission intervention. This intention is consistent with the Commission's recognition, as presented in the May 1996 Policy Statement, that departures from a safety-conscious work environment are much more effectively corrected from within a licensee's organization than by the intervention of government or another outside agency.

IV. Inclusion in the NRC Enforcement Policy or Issuance of a Separate Policy Statement

Another strategy toward standardizing the Commission's approach to this area would be to revise NUREG–1600, ''General Statement of Policy and Procedures for NRC Actions'' (generally known as the NRC Enforcement Policy), to include this standardized approach. While this strategy would not be binding on licensees in the sense of requiring, by regulation, a safety-conscious work environment, it would retain most of the other advantages of codification described above. This strategy would still successfully differentiate between licensees who perform well in this area and licensees who give cause for concern; it should heighten licensee awareness of the Commission's approach to evaluating licensee performance in this area; it should make licensees more sensitive to indicators of emerging adverse trends at their facilities; and it would provide licensees the opportunity to correct such trends before the safety-conscious work environment deteriorates to a point requiring Commission intervention.

The logic of including such an approach in the NRC Enforcement Policy is that it would contain standard criteria that, after consideration, could

[2] However, these symptoms may be advance indications, and any resulting decline in operational or safety performance may not emerge immediately. For this reason, the absence of operational or safety performance problems should not, by itself, be taken as assurance that the safety-conscious work environment has not deteriorated.

[3] Establishing and publishing a standardized approach clarifies the Commission's intention to respond to particular situations with particular actions. As a result of this clarification, any subsequent actions the Commission takes that are consistent with this expressed intention are less likely to be seen as arbitrary or prejudicially motivated, and therefore are less likely to be challenged. This logic is consistent with previous Commission experience in promulgating and implementing the *NRC Enforcement Policy* (NUREG 1600).

result in issuing orders to licensees. An alternative, however, would be to issue this approach in a separate Commission policy statement, to ensure that NRC monitoring of licensee performance in this area is separately administered and evaluated.

V. Explanation of the ''Holding Period'' Concept

Within the strategies being evaluated and discussed herein, the concept of a ''holding period'' warrants additional clarification. The holding period concept (sometimes also referred to as a ''safe harbor'' provision) was first introduced by the Allegation Review Team as a recommendation of NUREG–1499. Among other aspects, the Allegation Review Team recommended that, in applicable cases, the NRC Executive Director for Operations (or other senior NRC management) send a letter to senior licensee management reminding them of the Commission's policies on discrimination and the use of the holding period, and requesting a report to the NRC detailing the licensee's course of action. The holding period concept was carried forward to the Commission's May 1996 Policy Statement as a policy or action that a licensee might voluntarily choose to introduce; however, the Commission rejected the provision of sending a letter encouraging the licensee's use of the holding period in applicable cases. The Commission believes that several alternative strategies for mandating use of a holding period policy may merit reconsideration, particularly as an option for dealing with specific cases where a licensee's environment for raising safety concerns has significantly deteriorated.

In general, a licensee's holding period policy would provide that, when an employee complains that he or she has been discriminated against for engaging in protected activity, the licensee will maintain that employee's pay and benefits until the licensee has investigated the complaint, reconsidered the facts, negotiated with the employee, and informed the employee of a final decision on the matter. After the employee has been notified of the licensee's decision, the holding period would continue for an additional 2 weeks to allow a reasonable time for the employee to file with the DOL. If the employee files within that time, the licensee would continue the holding period until the DOL Area Office Director has made a finding based on the Area Office investigation.[4]

As discussed in NUREG–1499, the holding period is designed to minimize onsite conflict (and any associated chilling effect) generated by the perception that an employee may have been retaliated against for raising concerns. In addition, the holding period may be used to demonstrate management support for maintaining a safety-conscious work environment. As stated in the Commission's May 1996 Policy Statement:

> By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the action is being reconsidered or the dispute is being resolved.

In the past, both the staff recommendations and the Commission's policy have been to make the use of a holding period entirely voluntary. Even under the regulation or policy statement strategies discussed in Sections III and IV above, the use of a holding period (as well as other measures designed to promote a safety-conscious work environment) would be entirely voluntary for most licensees. However, in cases where the Commission determined that the licensee's safety-conscious work environment was deteriorating to the point of warranting additional NRC intervention, such a regulation or policy would provide that ordering the licensee's establishment of a holding period policy would be one of the options available at the discretion of the Commission.

Nothing in the application of such a Commission order or the resulting licensee holding period policy would mandate that a licensee employee must participate in or agree to the use of a holding period in a given case. In addition, for any case in which the Commission ordered the licensee to establish such a holding period policy, the licensee would continue to have the option as to whether a given complainant should be restored to his or her previous position, be assigned a new position, or be given administrative leave with pay and benefits. Furthermore, the Commission would continue to hold that, when a holding period policy has been established, the employer's action of not restoring a complainant to his or her previous position would not be considered an additional act of discrimination if the DOL AOD or Administrative Law Judge (ALJ) subsequently found in favor of the complainant, provided that (1) the employee had agreed to the provisions of the holding period, (2) pay and benefits were maintained, and (3) the employer restored the employee to the previous position without career prejudice upon a DOL finding of discrimination. Finally, the licensee bears responsibility for making legitimate personnel decisions, including termination or reassignment of an employee whose presence in the workplace could adversely affect safety. Neither the use of a holding period policy nor any other licensee action required by NRC order would relieve the licensee of this responsibility.[5] The function of the holding period is to counteract the chilling effect that may result when employees perceive that a fellow employee may have been terminated as the result of raising safety concerns, and thus placed at a financial disadvantage while seeking redress.

The Commission recognizes that the holding period concept has certain perceived drawbacks, as discussed by the Allegation Review Team in NUREG–1499. Some potential exists for abuse of a holding period policy, and it may be viewed as unfair to ask licensees to continue pay and benefits for employees whom the licensee believes are undeserving.[6] In addition, other factors

[4] In other words, the holding period would be in effect at least until the initial decision made under the DOL process. Under Section 211 of the Energy Reorganization Act, the DOL only provides a temporarily effective remedy to the complainant (i.e., a reinstatement of pay and benefits) after an Administrative Law Judge's (ALJ's) adverse finding that discrimination has occurred. Based on a NUREG 1499 recommendation, the Commission is considering legislation, to be developed in coordination with the DOL, in which certain adjustments would be made to the current DOL process, in that the DOL would be provided additional time to conduct a more in-depth initial investigation, and a temporarily effective remedy could be provided to the complainant based on the initial investigation. Thus, if the holding period were extended to the conclusion of the initial DOL investigation, an employee who alleged discrimination for engaging in protected activity would not be removed from pay and benefits at any point in the subsequent investigation and adjudication process, so long as the DOL continued to find in the employee's favor.

It is important to explain that the Commission is not attempting to preempt the DOL's role in providing a remedy to the complainant. The purpose of the holding period is to neutralize the conflict in the workplace until the dispute is resolved without presumption as to the outcome, thereby minimizing the chilling effect on the rest of the workforce. The chilling effect can arise, in this situation, when other employees perceive that a fellow worker has been allegedly discriminated against for engaging in protected activity, and immediately placed at a disadvantage in pursuing a resolution by the loss of pay and benefits.

[5] However, if a dispute arose as to whether the licensee had a legitimate purpose (i.e., the employee maintained that the action was based on engaging in protected activity), the licensee would still be required to maintain pay and benefits. In such a case, administrative leave with pay and benefits might be the best option.

[6] As discussed in Sections III and IV, the holding period would only be one of several options that the

(such as licensee down-sizing actions) may contribute to the occurrence of a significant increase in complaints of discrimination. The Commission would give these and other factors careful consideration before requiring this approach for any specific licensee.[7] However, the Commission believes that where there has been a significant failure to maintain a safety-conscious work environment, these drawbacks, including any financial burden incurred by the licensee, would be clearly offset by the benefits of instilling a general perception that senior licensee management is serious about becoming involved, reconsidering the facts, finding a resolution, and minimizing the adverse impact on the complainant during these deliberations. Where a chilling effect would otherwise have resulted from a more confrontational licensee approach, these benefits are clear; in addition, the willingness of licensee management to work toward internal resolution of such a conflict may result in financial savings (1) by avoiding lengthy, expensive litigation in the case at hand and (2) by offsetting the possibility of additional cases that may result from a chilling effect. Most importantly, the avoidance of a chilling effect may result in having safety issues identified that might not otherwise have been raised.

VI. Discussion of Alternative Strategy in Requiring a Holding Period Policy and Periodic Site Surveys

The Commission has considered an alternative strategy, in which all licensees would be required to institute a holding period policy and periodic site surveys, rather than only those licensees who perform poorly in this area. This approach would not differentiate to the same extent between those licensees who perform well in this area and those who give cause for concern. However, this approach would ensure that all licensees periodically monitor their work environments to assess the degree to which employees feel free to raise safety concerns. In addition, this approach would ensure that, for any situation in which an employee believes that he or she has been discriminated against for raising safety concerns, that employee would not be placed at a financial disadvantage (i.e., by the loss of pay and benefits) while pursuing a resolution. Under this approach, such an employee would continue to receive pay and benefits under the holding period even if the licensee had never before had such a complaint.

As stated earlier, the purpose of the holding period is to neutralize the conflict in the work environment until the dispute is resolved without presumption as to the outcome, thereby minimizing the chilling effect on the rest of the workforce. The chilling effect can arise when other employees perceive that a fellow worker has been discriminated against for engaging in protected activity, and then immediately placed at a disadvantage in pursuing a resolution by the loss of pay and benefits. By requiring all licensees to establish and implement a holding period policy, this alternative approach would attempt to offset this potential chilling effect on an industry-wide basis. Arguably, the benefits may not outweigh the costs in this approach, particularly in cases where the discrimination issue is a relatively isolated occurrence in an otherwise safety-conscious environment.

VII. Requests for Comments on the Approaches Discussed Herein

The Commission is considering various strategies that would clarify the responsibility of licensees to establish and maintain a safety-conscious work environment. The purpose of describing these strategies and posing certain questions is to illustrate the evaluation that has occurred to date, and to request public comment on the potential effectiveness of such actions, the advantages and disadvantages of the strategies described, and any suggestions on additions or deletions that would make these strategies more effective in achieving their stated purpose. Commenters should feel free to submit their responses to these questions anonymously; however, any information provided as to a commenter's background or degree of experience in this area will be helpful in analyzing and understanding the comments.

1. Should the Commission Proceed with Establishing a Standardized Approach to Ensuring That Licensees Establish and Maintain a Safety-Conscious Work Environment?

2. If Such an Approach Were Adopted, Would It Be Most Effective as: (a) A Proposed Rulemaking that Would Amend Part 50; (b) a revision to the NRC Enforcement Policy; or (c) a separately issued Commission policy statement?

3. What Additions or Deletions to the Draft Language of Such a Regulation or Policy, as Presented in Section IX, Below, Would Increase Its Effectiveness?

4. What Are the Advantages or Disadvantages of Implementing Such a Standardized Approach? (Comments are specifically requested as to whether the use of a holding period would achieve the objective of reducing the potential for a chilling effect in the work environment.)

5. What other means or indicators might the NRC use to evaluate licensee performance in this area other than the indicators mentioned in the language of Section IX, below?

6. What Would Be the Advantages or Disadvantages of Implementing the Alternative Approach to Requiring the Holding Period, as Described in Section VI, Above?

7. What Other Approaches Not Considered Here Would Be More Effective in Ensuring That Licensees Establish and Maintain a Safety-Conscious Work Environment?

VIII. Request for Regulatory Analysis Information

If a change of requirements is needed, the NRC will prepare a regulatory analysis to support any proposed or final rule. The analysis will examine the costs and benefits of regulatory alternatives available to the Commission.

The NRC requests public comment on the costs and benefits, normal business practices, new trends, and other information that should be considered in any such regulatory analysis. Comments may be submitted as indicated in the **ADDRESSES** heading.

IX. Specific Examples of Possible Language for a Regulation or Commission Policy

The NRC has developed language that may be applicable to a revision of Part 50 or (with necessary modifications) to a policy statement. This draft text reflects many of the issues as described. The NRC solicits comments on the following text, including the extent to which the text addresses the issues described. The NRC also solicits suggestions of alternative text that would address these issues.

NRC would have at its disposal under such a regulation or policy. Based on considering the specific attributes of a particular licensee's environment, the NRC might decide that requiring the use of a site-wide employee survey, an independent third-party oversight of the licensee's employee concern program, or some other measure should be required before, after, instead of, or in conjunction with a holding period policy.

[7] To be effective, the complainant should not be required to forfeit any pay or benefits received during the holding period if the DOL subsequently found that the licensee did not discriminate against the complainant. While such an approach could be perceived as unfair to the licensee, the Commission believes that such a burden is warranted in view of the benefit to the workplace environment.

Proposed Language: Safety-Conscious Work Environment

(a) Licensees shall establish and maintain a safety-conscious work environment in which employees are encouraged to raise safety and regulatory concerns, and where such concerns are promptly reviewed, given priority based on their potential safety significance, and appropriately resolved with timely feedback to the originator of the concern. Attributes of a safety-conscious work environment include:

(1) A management attitude that promotes employee involvement and confidence in raising and resolving concerns;

(2) A clearly communicated management policy that safety has the utmost priority, overriding, if necessary, the demands of production and project schedules;

(3) A strong, independent quality assurance organization and program;

(4) A training program that encourages a positive attitude toward safety;

(5) A safety ethic at all levels that is characterized by an inherently questioning attitude, attention to detail, prevention of complacency, a commitment to excellence, and personal accountability in safety matters.

(b) When circumstances occur that could adversely impact the safety-conscious environment, or when conditions arise that indicate the potential emergence of an adverse trend in the safety-conscious work environment, the licensee shall take action as required to ensure that the safety-conscious environment is preserved. Indicators that may be considered as possible evidence of an emerging adverse trend include, but are not limited to:

(1) Adverse findings by the Department of Labor or the NRC Office of Investigation (OI) concluding that discrimination has occurred against employees for engaging in protected activity, including a finding of the existence of a hostile work environment;

(2) A significant increase in the rate (or a sustained high number) of allegations made to the NRC that licensee employees are being subjected to harassment and intimidation for engaging in protected activity;

(3) A significant increase in the rate (or a sustained high number) of allegations made to the NRC concerning matters of safety or regulatory concern, particularly if accompanied by low usage or a decrease in use of the licensee's employee concern program (ECP) or other licensee channels for reporting safety and regulatory concerns;

(4) Other indications that the licensee's ECP or other programs for identifying and resolving safety and regulatory concerns are ineffective. Such indications might include: delays in or absence of feedback for concerns raised to the ECP; breaches of confidentiality for concerns raised to the ECP; the lack of effective evaluation, follow-up, or corrective action for concerns raised to the ECP or findings made by the licensee's QA organization; overall licensee ineffectiveness in identifying safety issues; the occurrence of repetitive or willful violations; a licensee emphasis on cost-cutting measures at the expense of safety considerations; and/or poor communication mechanisms within or among licensee groups.

(c) The presence of one or more of the indicators discussed in paragraph (b) of this section may or may not, in isolation, be considered evidence of deterioration in the licensee's safety-conscious work environment. Evaluation of the licensee's safety-conscious work environment should consider these indicators in the context of the overall work environment, including the presence or absence of other indicators, and the presence or absence of related licensee safety and performance issues.

(d) If, based on a review of indicators as discussed in paragraphs (b) and (c) of this section, the Executive Director for Operations determines that the licensee has failed to establish and maintain a safety-conscious work environment as discussed in paragraph (a) of this section, the NRC at its discretion may require the licensee to take action. This action may include (but is not limited to) ordering one or more of the following:

(1) Establishment of a formal employee concerns program (if one does not already exist);

(2) Performance of an independent survey of the licensee's environment for raising safety and regulatory concerns, with periodic follow-up surveys to monitor change;

(3) Establishment of an independent group for oversight of licensee performance in establishing and maintaining a safety-conscious work environment;

(4) Establishment of a ''holding period'' policy, to be applied in cases where an employee of the licensee or its contractor registers a complaint of having been discriminated against for engaging in protected activity. The holding period policy requires that, when such an employee submits to the licensee a complaint that he or she has been discriminated against for engaging in protected activity, the licensee will maintain that employee's pay and benefits until the licensee has investigated the complaint, reconsidered the facts, negotiated with the employee, and informed the employee of a final decision on the matter. After the licensee has informed the employee of its final decision, the holding period of continued pay and benefits will continue for an additional 2 weeks to allow a reasonable time for the employee to file a complaint of discrimination with the DOL. If, by the end of that 2-week period, the employee has filed with the DOL a complaint of discrimination for engaging in protected activity, the licensee will maintain the holding period of continued pay and benefits until the DOL has made a finding based on its initial investigation of the employee's complaint.

(5) Additional enforcement action pursuant to Subpart B of Part 2, including civil penalties.

Dated at Rockville, Maryland, this 19th day of February, 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–4702 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 1, 1997, through February 13, 1997. The last biweekly notice was published on February 12, 1997 (62 FR 6567).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules 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 a hearing and petitions for leave to intervene is discussed below.

By March 28, 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 for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: 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 (*Project Director*): 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts.

Date of amendment request: January 30, 1997.

Description of amendment request: The proposed amendment would change the Updated Final Safety Analysis Report (FSAR) to include the credit for containment overpressure in the Pilgrim Nuclear Power Station net positive suction head (NPSH) analysis for the emergency core cooling pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will crediting post-LOCA [loss-of-coolant accident] wetwell airspace pressure in ECCS [emergency core cooling system] analyses involve a significant increase in the probability or consequences of an accident previously evaluated?

Chapter 14 of the FSAR contains evaluations of the design basis accidents, which include the refueling accident, the main steam line break outside primary containment, the recirculation line break inside primary containment, and the control rod drop accident. No increase in the probability of the evaluated accidents will result from crediting the post-LOCA wetwell airspace pressure because post-LOCA wetwell airspace pressure does not represent an accident initiator but is rather a byproduct of the conditions which will exist in the containment after the pipe break inside containment.

The worst radiological consequences for the Pilgrim plant are associated with the design basis LOCA which is the double guillotine failure of the recirculation system piping. The radiological analysis of this event, contained in FSAR Chapter 14, uses a TID–14844 source term and assumes a 1.5% per day leakage from the containment, which is greater than the maximum leakage allowed by the Technical Specifications. The results of this analysis are presented in Table 14.5–2 of the FSAR and indicate substantial margin when compared to 10 CFR Part 100 limits.

The radiological consequences of the design basis accident are not increased by taking credit for the post-LOCA wetwell airspace pressure. Assuming containment integrity exists, the mechanism for increasing the consequences of the accident would be an increased leakage rate caused by an increase of the average differential pressure between primary and secondary containment during the accident response. However, the NPSH analyses performed for Pilgrim, which credits the post-LOCA wetwell airspace, does not require that the differential pressure between primary and secondary containment be maintained above the minimum that exists due to the equilibrium conditions based on the suppression pool temperature. Specifically, the wetwell airspace pressure credited in the ECCS pump NPSH analyses is provided by an increase in wetwell vapor pressure and air/nitrogen partial pressure in equilibrium with increasing pool temperature with an accounting for containment initial conditions and leakage.

By crediting the post-LOCA wetwell airspace pressure in the calculation of NPSH, no requirement is created to purposely maintain a higher containment pressure than would otherwise occur; no requirement is incurred to delay operating containment heat removal equipment at the highest rate possible; no requirement is incurred to deliberately continue any condition of high containment pressure to maintain adequate NPSH; and no requirement is incurred for the purposeful addition of air/nitrogen into the containment to increase the available pressure.

Based on these reasons, the probability of accidents previously evaluated is not increased, and the consequences of the design basis accident are not increased.

(2) Will crediting post-LOCA wetwell airspace pressure create the possibility for new or different kinds of accidents?

As stated above, Chapter 14 of the Pilgrim FSAR contains evaluations of design basis accidents that include the refueling accident, the main steam line break outside primary containment, the recirculation line break inside primary containment, and the control rod drop accident. New or different types of accidents are not created by crediting the post-LOCA wetwell airspace pressure because post-LOCA wetwell airspace pressure does not represent an accident initiator but is rather a byproduct of the conditions which will exist in the containment after the pipe break inside containment.

Therefore, crediting post-LOCA wetwell airspace pressure does not create the possibility for new or different kinds of accidents from those previously analyzed.

(3) Will crediting post-LOCA wetwell airspace pressure in ECCS NPSH analyses involve a significant reduction in a margin of safety?

The integrity of the primary containment and the operation of the ECCS systems in combination limit the off-site doses to values less than those suggested in 10 CFR 100 in the event of a break in the primary system piping. In order for the ECCS pumps to meet their performance requirements, the NPSH available to the pumps throughout the accident response must meet their specific NPSH requirements. Excess NPSH margin will not improve the performance of the ECCS pumps because NPSH available must only meet NPSH requirements for the pump to operate on its pump curve and meet design expectations.

Crediting post-LOCA wetwell airspace pressure in ECCS NPSH analyses increases the NPSH available to the pumps connected to the suppression pool but limits the increase in NPSH available consistent with the bounding leakage assumptions for the containment system. The amount of post-accident pressure that is utilized in ECCS NPSH analyses is calculated in a manner such that the pressure credited represents a conservative lower bound of the pressure available. Therefore, it is expected that the NPSH margin will exceed that credited in the NPSH analyses.

Credit for wetwell airspace pressure in NPSH analyses is not required under all circumstances. If the suction strainers for the ECCS pumps remain relatively free of post-LOCA debris, adequate NPSH will be available without credit for the wetwell airspace pressure provided by the post-LOCA heatup of the air/nitrogen gas in the containment. If debris accumulates on the pump suction strainers, the NPSH available to the ECCS pumps will be decreased due to the head loss caused by the debris. Credit for the post-LOCA wetwell airspace pressure in the analyses indicates that there is adequate NPSH margin such that NPSH available will remain above NPSH required, and ECCS pump performance will meet applicable requirements. Based on the above discussion, credit for wetwell airspace pressure in ECCS NPSH analyses does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Patrick D. Milano, Acting.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina.

Date of amendments request: November 1, 1996.

Description of amendments request: The amendments would revise the Technical Specifications (TS) to allow full implementation of the Boiling Water Reactor Owners Group (BWROG) Enhanced Option 1–A Reactor Stability Long Term Solution. In Safety Evaluation Reports (SERs) transmitted to Kevin P. Donovan, Chairman, BWROG, by letters from Robert C. Jones, Office of Nuclear Reactor Regulation, NRC, dated June 21, 1996, and September 20, 1996, the NRC staff concluded that Enhanced Option 1–A generic technical specifications described in Topical Report NEDO–32339, Supplement 4, were acceptable for referencing in license applications.

The characteristics of a reactor system most important in determining stability performance are power, core flow and power distribution. The proposed changes would delete the current limits on power and flow conditions in the technical specifications associated with the implementation of the guidance in General Electric Service Information Letter (SIL) #380, Revision 1 and the power/flow figure (Figure 3.4.1.1–1), add two new specifications on the fraction of core boiling boundary (FCBB) and the Period Based Detection System (PBDS) and relocate certain requirements pertaining to the Average Power Range Monitors (APRM) to the Core Operating Limits Report (COLR).

The current Technical Specifications for Units 1 and 2 permit single loop operation (SLO) only for a 12-hour period and there are no provisions for potential alterations of safety limits or operating limits because of SLO conditions. Approval of the amendment applications discussed above would permit SLO operation subject to the compensatory actions and requirements that address this mode of operation in the revised Technical Specifications. However, Brunswick Unit 2's License currently has a condition, 2.C.(5) that states that the reactor shall not be made critical unless both recirculation loops are in service. This License Condition also requires the plant to be placed in the hot shutdown condition within 24 hours if one recirculation loop becomes out-of-service. The License Condition also allows one or both recirculation loops to be out-of-service for the purposes of testing (not to exceed 24 hours). Whereas the License Condition would permit SLO for up to 24 hours, the current TS limit SLO to 12 hours. The License Condition was added to permit natural circulation testing as required by the startup test program but to preclude long-term SLO or operation in the natural circulation mode. The startup test program was completed many years ago for Brunswick Unit 2 and natural circulation operation is no longer allowed. The License Condition is no longer relevant and if not deleted would negate the objectives of the proposed license amendments discussed above. The licensee has submitted proposed license amendments on the same date of the subject application (i.e., November 1, 1996) to convert the Brunswick Units 1 and 2 Technical Specifications to the Improved Standard Technical Specifications (ISTS) consistent with NUREG–1433, Revision 1, ''Standard Technical Specifications for General Electric Plants, BWR 4.'' Attachment 6 of the later application was a proposed revision of the Brunswick Unit 2 License to delete License Condition 2.C.(5). While the Notice of Consideration of Issuance of the ISTS amendments (62 FR 3719) discussed deletion of License Condition 2.C.(5), the deletion is discussed in this Notice as well, since if the subject amendment applications are approved, the License Condition would thwart the considerable effort represented by the subject amendments to finally resolve the thermal-hydraulic stability issues for Brunswick Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments allow the implementation of the Enhanced Option 1–A (E1A) long term solution to the neutronic/thermal hydraulic instability issue. Current Technical Specification restrictions on power and flow conditions, number of operating recirculation loops and operator actions implemented to reduce the probability of neutronic/thermal hydraulic instability are eliminated and new stability control requirements consistent with NEDO–32339, Supplement 4, are imposed. These requirements include restrictions on power and flow conditions and actions associated with the modified APRM flow biased scram and control rod block functions. These actions include adherence to the boiling boundary limit stability control prior to entry and during operation in the region of the power and flow operating domain which is potentially susceptible to neutronic/thermal hydraulic instability in the absence of the stability control. In addition, the proposed amendments require operator actions based upon a new Period Based Detection System (PBDS). The PBDS is designed to provide alarm indication that conditions consistent with a significant degradation in the stability performance of the reactor has occurred and the potential for imminent onset of neutronic/thermal hydraulic instability may exist.

The proposed amendments will permit operation in regions of the power and flow operating domain postulated to be susceptible to neutron/thermal hydraulic instability (i.e., Restricted and Monitored Regions). Operation in these regions does not increase the probability of occurrence of initiators and precursors of previously analyzed accidents when neutronic/thermal hydraulic instability is not possible. The proposed amendments also permit the implementation of the features of the E1A solution which prevent neutronic/thermal hydraulic instability including pre-emptive reactor scram upon entry into the region of the power and flow operating domain most susceptible to neutronic/thermal hydraulic instability (i.e., Exclusion Region). Furthermore, the E1A solution requires implementation of stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of stability control, to neutronic/thermal hydraulic instability (i.e., Restricted Region). The E1A solution prevents neutronic/thermal hydraulic instability during operation in regions of the power and flow operating domain previously excluded from operation and therefore does not significantly increase the probability of a previously analyzed accident.

Operation in the regions of the power and flow operating domain excluded by current Technical Specification 3/4.4.1.1 and Figure 3.4.1.1–1 can occur as a result of anticipated operational occurrences. The severity of these transients may increase in the absence of operator actions due to the potential occurrence of neutronic/thermal hydraulic instability as a result of operation in these regions. The proposed amendments will permit the implementation of the E1A long term solution to the stability issue. Required features of the E1A solution include adherence to a boiling boundary limit stability control prior to selection by the operator of APRM flow biased scram and control rod block function setpoints which

allow operation in a region of the power and flow operating domain potentially susceptible, in the absence of the stability control, to neutronic/thermal hydraulic instability. Upon entry, as a result of an anticipated operational occurrence, into the region most susceptible to neutronic/thermal hydraulic instability during operation with the boiling boundary limit stability control met, the pre-emptive reactor scram prevents neutronic/thermal hydraulic instability. Therefore, the consequences of an accident do not significantly increase while operating with the stability control met. After exiting the region requiring the stability control to be met, the setpoints are automatically returned to the values applicable when anticipated operational occurrences can be initiated from conditions with the stability control not met. This automatic actuation of the more conservative setpoints ensures that the pre-emptive reactor scram will prevent operation as a result of an anticipated operational occurrence in the region most susceptible to neutronic/thermal hydraulic instability should the operator not select the more conservative setpoints appropriate for operation following exit from the region requiring stability control. These required features of the E1A solution prevent operation in the region of the power and flow operating domain most susceptible to postulated neutronic/thermal hydraulic instability by pre-emptive reactor scram regardless of how the region was entered. Therefore, the proposed amendments prevent the occurrence of neutronic/thermal hydraulic instability as a consequence of an anticipated operational occurrence and do not significantly increase the consequences of any previously analyzed accident.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments eliminate restrictions on power and flow conditions and impose alternative restrictions which permit the implementation of the E1A long term stability solution. The current restrictions on the power and flow conditions do not prevent the entry into regions of the power and flow operating domain most susceptible to neutronic/thermal hydraulic instability and therefore the possibility of neutronic/thermal hydraulic instability exists in the absence of operator action. The required features of the E1A solution implement a pre-emptive scram upon entry into the region most susceptible, without operator action, to neutronic/thermal hydraulic instability. The accessible operating domain allowed by the proposed amendments is a subset of the power and flow operating domain currently allowed. Current initiators and precursors of accidents and anticipated operational occurrences can not occur with new or different initial conditions. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from that previously evaluated.

Concurrent with the implementation of the proposed amendments, a modified Flow Control Trip Reference (FCTR) card and a new Period Based Detection System (PBDS) will be installed as required by the E1A solution. The function of the FCTR card is to aid the operator in the identification of entry into regions of the power and flow operating domain potentially susceptible to neutronic/thermal hydraulic instability and to initiate a pre-emptive scram upon entry into the regions most susceptible to neutronic/thermal hydraulic instability. This is accomplished by altering the values of setpoints of the APRM flow biased scram and the control rod block functions generated by the modified FCTR card, which are existing functions of the current FCTR card. The modified FCTR card design includes components which may be susceptible to electromagnetic interference or other environmental effects. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the PBDS environmental qualification values and will be confirmed to be enveloped by the E1A FCTR card environmental qualification values prior to installation. Therefore, the potential for spurious scrams or common mode failures induced by environmental effects (e.g., electromagnetic interference) is considered negligible. The installation of the modified FCTR card will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated. The function of the PBDS is to provide the operator with an indication that conditions consistent with a significant degradation in the stability performance of the reactor has occurred and the potential for imminent onset of neutronic/thermal hydraulic instability may exist. This is accomplished by the installation of a new PBDS card in the Neutron Monitoring System. The PBDS card takes inputs from individual local power range monitors and provides displays indicating alarm and status conditions to the operator in the control room. These displays can not create the possibility of a new or different kind of accident from any accident previously evaluated. The PBDS card design includes components which may be susceptible to electromagnetic interference or other environmental effects. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the PBDS environmental qualification values and will be confirmed to be enveloped by the E1A FCTR card environmental qualification values prior to installation. Therefore, the installation of the PBDS card will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendments do not involve a significant reduction in a margin of safety. The proposed amendments permit the implementation of the E1A long term solution to the stability issue. Under certain conditions, existing BWR designs are susceptible to neutronic/thermal hydraulic instability. General Design Criterion (GDC) 12 OF 10 CFR 50, Appendix A, requires thermal hydraulic instability to be prevented by design or be readily and reliably detected and suppressed. When the design of the reactor system does not prevent the occurrence of neutronic/thermal hydraulic instability, instability is an anticipated operational occurrence. GDC 10 of 10 CFR 50, Appendix A, requires that specified acceptable fuel design limits not be exceeded during anticipated operational occurrences.

Analyses performed by the BWROG indicate that neutronic/thermal hydraulic instability induced power oscillations could result in conditions exceeding the Minimum Critical Power Ratio (MCPR) Safety Limit (SL) prior to detection and suppression by the current design of the Neutron Monitoring System and Reactor Protection System. To ensure compliance with GDC 12, the BWROG developed Interim Corrective Actions (ICAs) to enhance the capability of the operator to readily and reliably detect and suppress neutronic/thermal hydraulic instability. The BWROG ICAs also provided additional guidance for monitoring local power range monitors beyond the requirements of current Technical Specification 3/4.4.1.1 to ensure adequate margin to the onset of neutronic/thermal hydraulic instability. Reliance on operator actions to comply with GDC 12 was accepted on an interim basis by the NRC pending final implementation of a long term solution to the stability issue.

The modified design of the Reactor Protection System (APRM flow biased scram) implemented with the E1A solution prevents neutron/thermal hydraulic instability. The E1A solution also requires implementation of the stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of the stability control, to neutronic/thermal hydraulic instability. As a result, the margin to the onset of neutronic/thermal hydraulic instability provided by the existing Technical Specification requirements and BWROG ICAs recommendations is not significantly reduced by the implementation of the E1A solution. The E1A solution assures compliance with GDC 12 by the prevention of neutronic/thermal hydraulic instability and therefore precludes neutronic/thermal hydraulic instability from becoming a credible consequence of an anticipated operational occurrence. The consequences of anticipated operational occurrences and the margin to the MCPR SL will not change upon the implementation of the E1A solution. Therefore, the proposed amendments 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.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Mark Reinhart (Acting).

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

Date of amendment request: January 20, 1997.

Description of amendment request: The proposed amendments would relocate the surveillance requirements for selected instrumentation from the Technical Specifications to licensee controlled documents because the instrumentation provides indication or an alarm only. The affected surveillance requirements are: 4.1.3.5.b, ''Control Rod Scram Accumulators''; 4.5.1.d.2.c, '' Emergency Core Cooling Systems—Operating''; 4.5.3.1.b, ''ECCS—Suppression Chamber''; and 4.6.2.1.c, ''Containment Systems—Suppression Chamber''. In addition, the proposed amendments would replace TS SR 4.4.3.2.1, ''Reactor Coolant System Leakage'' and SR 4.5.1.d.1, ''ECCS—Operating'' with surveillances more appropriate to the associated LCOs and action statements. Also, the proposed amendments add an action statement to TS 3.5.1, ''ECCS—Operating'' regarding pressure of the ADS accumulator backup compressed gas system bottle, and delete action statements 3.5.3.c, 3.5.3.d, 3.6.2.1.c and 3.6.2.1.d regarding suppression chamber water level instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed change relocates instrumentation requirements, which provide no post-accident function from the Technical Specifications to the Bases, UFSAR, procedures, or other plant controlled documents. These requirements are part of routine operational monitoring and are not considered in the safety analysis. The Bases, UFSAR, procedures, and other plant controlled documents containing the relocated information will be maintained in accordance with 10 CFR 50.59. In addition to 10 CFR 50.59 provisions, the Technical Specification Bases are subject to the change control provisions in the Administrative Controls Chapter of the Technical Specifications. The UFSAR is subject to the change control provisions of 10 CFR 50.71(e), and plant procedures and other plant controlled documents are subject to controls imposed by plant administrative procedures, which endorse applicable regulations and standards. Since any changes to the Bases, UFSAR, procedures, or other plant controlled documents will be evaluated per the requirements of 10 CFR 50.59, no significant increase in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Coolant Operational Leakage limits monitoring surveillance 4.4.3.2.1 has been modified to eliminate procedural details of what instrumentation/leakage detection systems to use in verifying limits. The proposed surveillance requires verification that the reactor coolant system leakage is within limits at the same frequency as the current surveillance requirement. The reactor coolant leakage detection systems operability requirements are controlled by Technical Specification 3/4.4.3.1. Since any changes to procedures describing the method of monitoring leakage will be evaluated per the requirements of 10 CFR 50.59, no significant increase in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The monitoring action and the surveillance requirements added for the Automatic Depressurization System (ADS) pneumatic supply help assure the continued operability of ADS for the mitigation of accidents involving high reactor vessel pressure and the loss of the high pressure core spray system. The surveillance frequency is reasonable for the ADS supply header pressure due to the redundancy of the instrument nitrogen system, [and] several alarms [that warn] of system trouble. The ADS accumulator backup compressed gas system bottle pressure monitoring surveillance frequency and the proposed action on low bottle pressure is reasonable due to the [presence of the] ADS accumulator check valves and the [availability of the] normal ADS supply header. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements, and adequate control of the requirements will be maintained. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. In addition, the requirements to be transposed from the Technical Specifications to procedures, or other plant controlled documents are the same as the existing Technical Specifications. Since any future changes to these requirements in the Bases, UFSAR, procedures, or other plant controlled documents will be evaluated per the requirements of 10 CFR 50.59, no significant reduction in a margin of safety will be allowed.

Based on 10 CFR 50.92, the existing requirement for NRC review and approval of revisions to these requirements proposed for relocation does not have a specific margin of safety upon which to evaluate. However, since the proposed change is consistent with the BWR Standard Technical Specifications, NUREG–1434, approved by the NRC Staff, revising the Technical Specifications to reflect the approved level of instrumentation requirements ensures no significant reduction in the margin of safety.

The Reactor Coolant Operational Leakage limits monitoring surveillance 4.4.3.2.1 has been modified to eliminate procedural details of what instrumentation/leakage detection systems to use in verifying limits. The proposed surveillance requires verification that the reactor coolant system leakage is within limits at the same frequency as the current surveillance requirement. The reactor coolant leakage detection systems operability requirements are controlled by Technical Specification 3/4.4.3.1. Because there are no changes to either the reactor coolant leakage detection systems and the reactor coolant leakage continues to be maintained within the specified limits, at the required frequency, there is no reduction in the margin of safety.

The monitoring action and the surveillance requirements added for the Automatic Depressurization System (ADS) pneumatic supply help assure the continued operability of ADS for the mitigation of accidents involving high reactor vessel pressure and the loss of the high pressure core spray system. This helps assure ADS is maintained in a ready status. The previous TS SRs only tested the instrumentation, and did not verify the parameter remained within limits. Therefore, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan.

Date of amendment request: January 10, 1996.

Description of amendment request: The proposed amendment would revise test requirements for the containment emergency escape airlock.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed change to the Technical Specifications would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not alter any plant operating conditions, operating practices, equipment design, equipment settings, or equipment capabilities. Therefore, operation of the facility in accordance with the proposed change will not involve an increase in the probability of an accident. This determination is made because the full pressure test and the seal contact check provides reasonable assurance that the Emergency Escape Airlock doors will act as designed to maintain containment integrity. Procedures are established to test seal integrity with full pressure airlock test and to verify the seal contact following the test. Acceptance criteria are established for each evolution. Failure to meet the acceptance criteria would result in corrective action to restore the Emergency Escape Airlock to the intended condition.

The proposed change defines the pressure tests required for the Emergency Escape Airlock and specifies the method used to restore the airlock door seals after full pressure testing. Due to the design of the airlock, the doors must be opened after testing. This change recognizes the practice of verifying the final integrity of the airlock by verifying door seal contact. Since the pressure test does not load the door seals in the same direction as a design basis accident, this seal contact check provides better assurance that the door is sealed than alternative pressure tests. The Emergency Escape Airlock continues to be capable of performing its design function and the consequences of those accidents previously evaluated will not increase.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not alter any plant operating conditions, operating practices, equipment design, equipment settings, or equipment capabilities. Therefore, operation of the facility in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change requires testing of the Emergency Escape Airlock at full pressure (greater than or equal to P_a) rather than a reduced pressure between-the-seals test. This reduced pressure test is allowed by the existing Technical Specifications when the door is opened during periods when containment integrity is required. The door seal contact check and restoration will provide assurance that the Emergency Escape Airlock is capable of performing its design function after the doors are opened during recovery from full pressure testing. Implementation of these test requirements and meeting the acceptance criteria will ensure that containment integrity with respect to the Emergency Escape Airlock will be maintained. Therefore, there will be no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John N. Hannon.

Duke Power Company, Docket Nos. 50–269, 270 and 50–287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina.

Date of amendment request: February 5, 1997 (TSC 96–11)

Description of amendment request: The proposed changes would reflect replacement of the existing nuclear instrumentation with an enhanced wide range nuclear instrumentation system that provides more channels and continuous coverage from the source to above the power range. As a result: (1) The various references to Intermediate Range of nuclear instrumentation would be eliminated and replaced with reference to Wide Range instrumentation; (2) the minimum number of operable Source and Wide Range Nuclear Instrumentation channels that are available and that are required to be operable in Table 3.5.1–1 would be increased; (3) the minimum power level specified in Note (c) of Table 3.5.1–1 would be changed from 10^{-10} amps on the intermediate range instrument channels to 4×10^{-4}% rated power on the wide range instrument channels; and (4) entries that specify the Wide Range Nuclear Instrumentation, the number of Required Operable Channels, reference to a new Action Statement, and Applicability would be added to Table 3.5.6–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to the Oconee Technical Specifications is associated with the implementation of an enhanced nuclear instrumentation system. The new Gamma Metrics system provides twice the number of channels of neutron detectors for use during both normal plant operations and post-accident monitoring. The proposed change will make Oconee's Technical Specifications consistent with a nuclear instrumentation system that meets the reliability and redundancy requirements of Regulatory Guide 1.97. Additionally, the new Technical Specifications will be more conservative in terms of stating the minimum number of operable channels required, since there are now a greater number of redundant channels available. Assuring that the nuclear instrumentation at Oconee is more reliable and more redundant, does not affect the probability of an occurrence of an accident, since this system is a monitoring system and not an accident initiator. However, these characteristics (increased reliability and redundancy) could provide additional capability to deal with the consequences of post-accident situations.

(2) Will the change create the possibility of a new or different kind of accident from any [kind of accident] previously evaluated?

No. The proposed amendment to Oconee Technical Specifications involves the implementation of an enhanced nuclear instrumentation system. By implementing a nuclear instrumentation system that meets the provisions of Regulatory Guide 1.97, Oconee's ability for neutron monitoring is enhanced during normal operations and post-accident recovery. The Source Range nuclear instrumentation system is utilized for monitoring purposes only, while the Wide Range provides a control rod withdrawal interlock based on high startup rate. The new Gamma Metrics detectors have been shown to be more reliable, accurate, and redundant than Oconee's original detectors. Therefore, changing the Oconee Technical Specifications to be consistent with the current nuclear instrumentation arrangement, as proposed in this amendment request, has no effect on the possibility of any type of accident: new, different, or previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability to maintain the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed Technical Specifications amendment will establish operability requirements for an enhanced nuclear instrumentation system at Oconee. By

implementing a more reliable and redundant nuclear instrumentation system, Oconee's post-accident monitoring capability is enhanced. Therefore, the ability to protect the public from radiation dose is further assured, and no reduction in any existing margin of safety will occur.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

Entergy Operations, Inc., et al., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi.

Date of amendment request: October 22, 1996.

Description of amendment request: The proposed amendment would revise Figure 3.4.11–1, ''Minimum Reactor Vessel Metal Temperature vs. Reactor Vessel Pressure,'' in Limiting Condition for Operation 3.4.11, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits,'' of the Technical Specifications (TSs). The existing curve is valid only up to 10 Effective Full Power Years (EFPYs) and would be revised to be valid up to 32 EFPYs.

The proposed curves, pages 1 through 5 of Figure 3.4.11–1, have been drawn for five different EFPY periods: 16, 20, 24, 28 and 32. There are two sets of curves attached to the licensee's application. The first set of curves (Attachment 3) would replace the existing curve in TS Figure 3.4.11–1. The second set of curves (Attachment 4) are duplicates of the Attachment 3 curves except that these curves also contain detailed information used in development of the curves and would be included in the next update of the Updated Final Safety Analysis Report (UFSAR) for information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, in its application for the proposed amendment, which is presented below:

(A) The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

Regulatory Guide 1.99, Revision 2 is currently used to prepare the pressure-temperature limit curves and is inherently conservative for Boiling Water Reactors (BWRs). [Grand Gulf Unit 1 is a BWR.] The proposed Technical Specification Figure 3.4.11–1 was prepared in accordance with the requirements of 10CFR50 [10 CFR Part 50], Appendix G [(Fracture Toughness Requirements)], and using NRC approved methodology outlined in NRC Regulatory Guide 1.99, Revision 2, ''Radiation Embrittlement of Reactor Vessel Materials.'' Operation of the plant within the limitations of the proposed figure will ensure that the Requirements of 10CFR50 [10 CFR Part 50], Appendix G are met up to and including 32 Effective Full Power Years (EFPY) of operation. The proposed changes assure that the existing safety limits are not exceeded due to changing Reactor Vessel conditions by continued incorporation of the effect of neutron radiation embrittlement of vessel materials into the proposed curves.

The curves have also been editorially enhanced by removal of phrases used for validation of the curves. Having the phrases on the TS (Technical Specification) curves distracts from the intended purpose which is to maintain operation of the reactor to the right of the curves. Operators, in performance of their job function, do not need this information to comply with TS Limiting Condition for Operation (LCO) 3.4.11. This change also revises the curve labeling consistent with the terminology used in Table 1 of 10CFR50 [10 CFR Part 50], Appendix G. These enhancements and revisions have no impact on the operation of the plant since they are editorial in nature and do not change the technical content of the curves.

Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

(B) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The pressure-temperature curves are controlled by the Technical Specifications and are determined using the conservative methodology in NRC Regulatory Guide 1.99, Revision 2, ''Radiation Embrittlement of Reactor Vessel Materials.'' The proposed pressure-temperature limit curves are inherently conservative, therefore, the possibility of failure of the reactor vessel is not increased. The proposed curves establish new periods of applicability (16, 20, 24, 28, and 32 EFPY) for the current pressure-temperature limitations based on NRC methodology in Regulatory Guide 1.99 and actual fluence measurements. These limitations are appropriate up to and including 32 EFPY exposure and operation of the plant within the figure's limitations will ensure that the requirements of 10CFR50 [10 CFR Part 50], Appendix G are met for that time frame. No physical plant modifications or new operating configurations result from these changes. These changes do not adversely affect the design or operation of any system or component important to safety, rather they establish limits to assure that operations remain within acceptable safety boundaries.

The curves have also been editorially enhanced by removal of phrases used for validation of the curves. Having the phrases on the TS curves distracts from the intended purpose which is to maintain operation of the reactor to the right of the curves. Operators, in performance of their job function, do not need this information to comply with TS Limiting Condition for Operation (LCO) 3.4.11. This change also revises the curve labeling consistent with the terminology used in Table 1 of 10CFR50 [10 CFR Part 50], Appendix G. These enhancements and revisions have no impact on the operation of the plant since they are editorial in nature and do not change the technical content of the curves.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(C) The proposed change does not involve a significant reduction in a margin of safety.

The proposed curves were developed using the methodology of Regulatory Guide 1.99, Revision 2, ''Radiation Embrittlement of Reactor Vessel Materials.'' This methodology includes an allowance for margin that is to be included in the upper-bound values of the adjusted reference temperature (ART). The proposed changes maintain the existing margins of safety by modifying the operating limits based on the most limiting of the actual reference temperature shifts. These new limits consider the most limiting pressure vessel material. The revised analysis demonstrates that the existing Technical Specification [TS] pressure-temperature limit curves are applicable for periods of 16, 20, 24, 28, and 32 EFPY. Using the methodology in NRC Regulatory Guide 1.99 Revision 2 and fluence based on actual exposure provides for additional conservatism, and therefore [,] further assures the existence of current margins of safety. The proposed pressure-temperature limit curves are inherently conservative and provide sufficient margin to ensure the integrity of the reactor vessel.

The curves have also been editorially enhanced by removal of phrases used for validation of the curves. Having the phrases on the TS curves distracts from the intended purpose which is to maintain operation of the reactor to the right of the curves. Operators, in performance of their job function, do not need this information to comply with TS Limiting Condition for Operation (LCO) 3.4.11. This change also revises the curve labeling consistent with the terminology used in Table 1 of 10CFR50 [10 CFR Part 50], Appendix G. These enhancements and revisions have no impact on the operation of the plant since they are editorial in nature and do not change the technical content of the curves.

Continuing commitment to the methodology contained in NRC Regulatory Guide 1.99, Rev. 2, will ensure that the most limiting plate or beltline weld material will be utilized in the determination of the pressure-temperature limits for any future curve changes.

Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Project Director: William D. Beckner.

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: January 10, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) for reactor pressure vessel pressure and temperature (P–T) limits to replace the curves for 2 effective full power years (EFPY) with curves for 12 EFPY. The P–T curves are used for heatup, cooldown, and inservice leak and hydrostatic testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Pressure-temperature (P–T) limits (RBS Technical Specifications Figure 3.4.11–1) are imposed on the reactor coolant system to ensure that adequate safety margins against nonductile or rapidly propagating failure exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The P–T limits are related to the nil-ductility reference temperature, RT_{NDT}, as described in ASME Section III, Appendix G. Changes in the fracture toughness properties of [Reactor Pressure Vessel] RPV beltline materials, resulting from the neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10 CFR [Part] 50, Appendix H. The effect of neutron fluence on the nil-ductility reference temperature of pressure vessel steel is predicted by methods given in Regulatory Guide [RG] 1.99, Rev. 2.

The revised P–T limits of this amendment request were established based on adjusted reference temperatures developed in accordance with the procedures prescribed in Reg. Guide [RG] 1.99, Rev. 2, Regulatory Position C.1. Calculation of adjusted reference temperature by these procedures includes a margin term to ensure conservative, upper-bound values are used for the calculation of the P–T limits. Stress intensity factors used to compute the pressures were calculated in accordance with, and include the required safety factors given in ASME Section III, Appendix G. The limits established by the lower portion of the P–T curves, which cover the discontinuity (non-beltline) regions of the vessel (e.g., flanges, nozzles, etc.), were retained throughout this current analysis. The limits established by the lower portion of these curves do not change as they are not affected significantly by the neutron fluence.

This change is not related to any accidents previously evaluated. The proposed change will provide for approved P–T limit curves which are valid through 12 EFPY. This change will not affect any Safety Limits, Power Distribution Limits, or Limiting Conditions for Operation. The proposed change will not affect reactor pressure vessel [RPV] performance as no physical changes are involved and RBS vessel P–T limits will remain conservative in accordance with Reg. Guide [RG] 1.99, Rev. 2 and ASME Section III, Appendix G requirements. The proposed change will not cause the reactor pressure vessel [RPV] or interfacing systems to be operated outside of their design or testing limits. Also, the proposed change will not alter any assumptions previously made in evaluating the radiological consequences of accidents. The proposed change ensures that adequate margins against brittle fracture of the vessel are maintained through 12 EFPY of reactor operations. Therefore, the probability or consequences of accidents previously evaluated will not be increased by the proposed change.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is a revision of Technical Specification Figure 3.4.11–1 to show P–T limit curves valid through 12 EFPY. The revised P–T limits have been established in accordance with applicable NRC regulations and the ASME Code. This proposed change does not involve a modification of the design of plant structures, systems, or components. The proposed change will not impact the manner in which the plant is operated as plant operating and testing procedures will not be affected by the change. The proposed change will not degrade the reliability of structures, systems, or components important to safety (ITS) as equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, supporting system performance will not be downgraded, the frequency of operation of ITS equipment will not be imposed. No new accident types or failure modes will be introduced as a result of the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from that previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

As stated in the River Bend SER, ''Appendices G and H of 10 CFR 50 describe the conditions that require pressure-temperature [P–T] limits and provide the general bases for these limits. These appendices specifically require that pressure-temperature [P–T] limits must provide safety margins at least as great as those recommended in the ASME Code, Section III, Appendix G. * * * Until the results from the reactor vessel surveillance program become available, the staff will use RG 1.99, Revision 1 [now Revision 2] to predict the amount of neutron irradiation damage. * * * The use of operating limits based on these criteria—as defined by applicable regulations, codes, and standards—will provide reasonable assurance that nonductile or rapidly propagating failure will not occur, and will constitute an acceptable basis for satisfying the applicable requirements of GDC 31.''

Bases for RBS Technical Specification 3.4.11 states: ''The P/T [P–T] limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the RCPB, a condition that is unanalyzed. * * * Since the P/T [P–T] limits are not derived from any DBA, there are no acceptance limits related to the P/T [P–T] limits. Rather, the P/T [P–T] limits are acceptance limits themselves since they preclude operation in an unanalyzed condition.''

This amendment request proposes P–T limit curves which will be valid through 12 EFPY. The proposed P–T limits were established based on adjusted reference temperatures for vessel beltline material calculated in accordance with Regulatory Position 1 of Reg. Guide [RG] 1.99, Rev. 2 and pressures calculated in accordance with ASME Section III, Appendix G requirements. Required margins and safety factors were included to ensure that conservative, upper-bound values were used in calculation of the P–T limits. The proposed change will not affect any Safety Limits, Power Distribution Limits, or Limiting Conditions for Operation. The proposed change does not represent a change in initial conditions, or in a system response time, or in any other parameter affecting the course of an accident analysis supporting the Bases of any Technical Specification. The proposed P–T limits provide adequate safety margins against brittle failure of the reactor vessel through 12 EFPY of power operations. For these reasons, the proposed changes do not involve a reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: William D. Beckner.

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: January 20, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to allow the use of flow control spectral shift strategies to increase cycle energy; an estimated additional 30 days at full power. The request is based on a General Electric (GE) Maximum Extended Load Line Limit (MELLL) analysis for the River Bend Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

Abnormal operational transients or accidents analyzed in the SAR have been examined for any impact caused by MELLL operation. The limiting abnormal operation transients, including the Generator Load Rejection with No Bypass (LRNBP) event and the Feedwater Controller Failure (FWCF) maximum demand event, have been evaluated in detail. The LOCA [Loss-of-Coolant Accident], Fuel Loading Error (FLE), rod drop accident, rod withdrawal error, and the Anticipated Transient Without Scram (ATWS) analyses have also been evaluated for the effects of MELLL operation. The flow and power dependent [Minimum Critical Power Ratio] MCPR curves for off-rated and rated conditions and the [Maximum Average Planar Linear Heat Generation Rate] MAPLHGR criteria establish limits on power operation. These limits ensure that the core is operated within the assumptions and initial conditions of the transient or accident analyses. Operation within these limits will ensure that the consequences of a transient or accident remain within the acceptable limits of the analyses.

The [Average Power Range Monitor] APRM scram in the Technical Specifications [TSs] and affected rod block setpoints are revised to ensure that operation remains within the analyzed MELLL region. This restriction ensures the consequences of abnormal operation and accidents are acceptable. The probability of an accident is not affected by the proposed Technical Specification [TS] changes since no systems or equipment which could initiate an accident are affected. Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

2. The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

Operation in the MELLL domain expands the current power/flow along the 121% rod line to 100% power at 75% rated core flow and improves flexibility and capacity factor. Abnormal operation transients or accidents have been evaluated and the most limiting cases have been analyzed for applicability for operation in the MELLL region. The proposed Technical Specification [TS] changes prohibit power operation outside the MELLL region and do not constitute or require any system or equipment changes that might create an accident of a different type then previously evaluated. The MAPLHGR, the power and flow dependent MCPR and [Liner Heat Generation Rate] LHGR and the revised Technical Specifications [TSs] will continue to assure that plant operation is consistent with the assumptions, initial conditions and assumed power distribution and therefore will not create a new type of accident. The proposed Technical Specification [TS] changes do not introduce any new modes of plant operation nor involve new system interactions. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previous analyzed.

3. The request does not involve a significant reduction in a margin of safety.

The proposed Technical Specifications [TSs] prohibit power operation outside the allowable MELLL region. The transients and accidents described in the SAR are evaluated for operation in the MELLL region. NEDC–32611, ''MELLL Analysis for River Bend Station Reload 6 Cycle 7,'' shows that the OLMCPR for operation in the MELLL region is bounded by the OLMCPR established for current conditions (100% power/107% flow). The thermal limits MCPR and LHGR curves and the MAPLHGR limits establish limits on power operation and thereby ensure that the core is operated within the assumptions and initial conditions of the transient and accident analyses.

As demonstrated in the analysis provided in Attachment 4, [the proposed amendment request] operation within these limits, using the MCPR limits, LHGH limits and MAPLHGR criteria, will ensure that the margin of safety will be maintained to the same level described in the Technical Specifications Bases and the SAR and the consequences of the postulated transient or accidents are not increased. The MCPR safety limit, mechanical performance limits and overpressure limit are not exceeded during any transient or postulated accident. Therefore, the proposed Technical Specifications [TSs] to allow operation in the MELLL region do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005.

NRC Project Director: William D. Beckner.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine.

Date of amendment request: February 7, 1997.

Description of amendment request: The proposed amendment would modify Technical Specification 3.12 to require both 115 kV incoming lines to be operable when the reactor is critical; allow continued operations for up to 72 hours with one 115 kV incoming line inoperable; allow continued operations for up to 24 hours with both 115 kV incoming lines inoperable; apply the increased operability requirements described above to another affected remedial action; incorporate minor editorial changes to uniformly apply the usage of the term ''operable;'' and change the basis section to be consistent with the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Specification 3.12.B do not involve a physical change to the plant or the maintenance of the plant. The proposed changes increase the operating requirements associated with the operability of the 115 kV incoming lines beyond that currently required by Technical Specifications. For those accidents previously evaluated, the more restrictive operability requirements associated with maintaining both 115 kV incoming lines operable and the more restrictive remedial action times result in increased assurance that station service power will be available when required. This increased availability will be achieved because elective maintenance on the offsite power system will be significantly restricted and the restoration of inoperable 115 kV incoming lines will be treated with greater urgency. The increased

assurance of availability will result in a decrease in the probability or consequences of these postulated accidents.

However, the more restrictive remedial action times decrease the restoration period and consequently increase the possibility that successful restoration may not be achieved, given an outage of the 115 kV power system. A unit shutdown without offsite power would then be commenced. This evolution would involve a unit shutdown without the availability of equipment such as the reactor coolant pumps, condensate pumps and main feedwater pumps. Although none of these components are credited as available for the mitigation of the consequences of accidents previously evaluated, the probability of the occurrence of certain accidents is increased without them.

Although the combination of these considerations could involve an increase in the probability of accidents previously evaluated, the increase would not be significant due to the low probability of independent failures or common cause failures of both of the 115 kV incoming lines. There is no increase in the consequences of any accident previously evaluated as a result of these proposed Technical Specification changes. The proposed Technical Specification changes are consistent with the Standard Technical Specifications approved by the NRC. The proposed changes, therefore, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed Technical Specification change does not involve a change to the physical plant or to the physical configuration of the offsite power system. The effect of the proposed change will be to increase the availability of the offsite power system when required. In addition, the proposed change will increase the possibility of a unit shutdown without offsite power operable. However, the accidents previously evaluated assume a simultaneous loss of offsite power, design basis accident and worst case single failure as part of the design basis. The proposed changes do not result in the creation of a unique operating condition or a configuration that has not been previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

This proposed change modifies Technical Specification 3.12 to be consistent with the Standard Technical Specifications. The proposed Technical Specification change maintains the current margin of safety which is based upon supplying power to engineered safeguards. Adequate sources of power remain available for the operation of the engineered safeguards equipment. Therefore, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011.

NRC Project Director: Patrick D. Milano, Acting.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London, Connecticut.

Date of amendment request: February 3, 1997.

Description of amendment request: The licensee has proposed to revise Section 6, ''Administrative Controls,'' of the Millstone Unit Nos. 1, 2, and 3 Technical Specifications to reflect organizational changes that have been implemented in the Nuclear Division.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

* * * The proposed changes do not involve a [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No design basis accidents are affected by these proposed changes. The proposed changes are administrative in nature and are being proposed to reflect the organizational changes which become effective on February 3, 1997. The unit level responsibilities of the Executive Vice President—Nuclear are assigned to the Officers for the individual Millstone units. The site level responsibilities of the Executive Vice President—Nuclear are shared by the Senior Vice President and CNO [Chief Nuclear Officer]—Millstone and the President and Chief Executive Officer. The changes to the SORC [Site Operations Review Committee] and the three unit[s'] PORC [Plant Operations Review Committee] reflect changes in job function or job position titles only.

No safety systems are adversely affected by the proposed changes, and no failure modes are associated with the changes.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Because there are no changes in the way plants are operated due to this administrative change, the potential for an unanalyzed accident is not created. There is no impact on plant response, and no new failure modes are introduced. These proposed administrative and editorial changes have no impact on safety limits or design basis accidents, and they have no potential to create a new or unanalyzed event. The changes to the SORC and the three unit[s'] PORC reflect changes in job function or job position titles only.

3. Involve a significant reduction in a margin of safety.

The changes do not directly affect any protective boundaries nor do they impact the safety limits for the protective boundaries. These proposed changes are administrative and editorial in nature. Therefore, there is no reduction in the margin of safety. These changes do not reduce the margin of safety provided by the PORC and the SORC review and approval of changes to the operations of the Millstone Unit Nos. 1, 2, and 3.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of amendment request: February 5, 1996.

Description of amendment request: The amendment would delete a clause from Technical Specification 4.0.5.a. Specifically, this change would delete the clause ''(g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i).'' The amendment would also make the appropriate changes to the Bases section. In addition, NNECO made changes to Bases Section 3/4.7.7 and 3/4.7.8 to add design basis information and provide clarification of system design and operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

Pursuant to 10 CFR 50.92, NNECO has reviewed the proposed changes to Technical Specification 4.0.5a and Bases Section 3/4.4.10 and has concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would remove the wording ''* * * (g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i).'' The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed changes, in accordance with NUREG–1431 and NUREG–1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC has issued a safety evaluation and granted the relief. The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect any technical specification that preserves safety analysis assumptions. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed changes would not affect the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes would remove the wording ''* * * (g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i).'' The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed changes, in accordance with NUREG–1431 and NUREG–1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC has issued a safety evaluation and granted relief. The changes being proposed are administrative in nature and will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed changes would remove the wording ''* * * (g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i).'' The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed changes, in accordance with NUREG–1431 and NUREG–1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC has issued a safety evaluation and granted relief. The changes being proposed are administrative in nature and will not alter the bases for assurance that safety-related activities are performed correctly or the basis for any technical specification that is related to the establishment or maintenance of a safety margin. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed changes would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Deputy Director: Phillip F. McKee.

United States Department of Commerce, National Institute of Standards and Technology, Docket No. 50–184, NIST (formerly known as National Bureau of Standards) Test Reactor or NBSR.

Date of amendment request: January 17, 1997.

Description of amendment request: The National Institute of Standards and Technology (NIST) is planning to change the name of the Reactor Radiation Division to the NIST Center for Neutron Research to be headed by a Director. The requested amendment involves a name change only. All functions, responsibilities, and personnel remain the same. The Technical Specification references to the ''Chief, Reactor Radiation Division'' will be changed to Director, NIST Center for Neutron Research in Sections 7.1, 7.2, and 7.3. The Organization Chart in Figure 7.1 will also reflect this change. The Technical Specification references to the ''Reactor Radiation Division'' will be changed to ''NIST Center for Neutron Research'' in Section 7.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The change being proposed is a change in the title of the organization and the title of the head of the organization that directs the operation of the reactor. As noted previously, all functions, responsibilities and personnel remain the same. The staff agrees with the licensee's no significant hazards consideration and finds that the mere title changes render a negative response to the three criteria outlined in 10 CFR 50.92(c).

Local Public Document Room location: N/A.

Attorney for licensee: N/A

NRC Project Director: Seymour H. Weiss.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of amendment request: December 10, 1996.

Description of amendment request: The proposed amendment would move fire protection requirements from the Vermont Yankee Technical Specifications to the Fire Protection Plan and the final safety analysis report (FSAR), in accordance with the guidance in NRC Generic Letters 86–10 and 88–12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed changes are administrative in nature and are consistent with the guidance provided in NRC Generic Letters 86–10 and 88–12. These changes do not affect the initial conditions or precursors assumed in the FSAR safety analyses. These proposed changes also do not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents. Programmatic controls will continue to assure that fire protection program changes do not reduce the effectiveness of the program to achieve and maintain safe shutdown in the event of a fire.

2. The proposed amendment will not create the possibility of a new or different kind of accident from an accident previously evaluated:

The proposed changes do not modify any plant equipment, there is no reduction in fire protection requirements, there is no change in operating procedure and surveillance requirements and no reduction in administrative control or equipment reliability. Therefore, implementation of the proposed change will not affect the design function or configuration of any component, introduce any new operating scenarios, failure modes or accident initiators.

3. The proposed amendment will not involve a significant reduction in a margin of safety:

The proposed amendment does not involve a reduction to the Fire Protection Program. The fire protection requirements are simply being relocated to other controlled documents. There are no equipment modifications being proposed, only the location of fire protection requirements, which is administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: R. K. Gad, III, Ropes and Gray, One International Place, Boston, MA 02110–2624.

NRC Project Director: Patrick D. Milano, Acting Director.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina.

Date of amendment request: January 10, 1997.

Brief description of amendment: The proposed change would revise Technical Specification 4.8.1.1.2 to clarify pressure testing requirements for the isolable and non-isolable portions of the diesel fuel oil piping.

Date of publication of individual notice in Federal Register: February 5, 1997 (62 FR 5490).

Expiration date of individual notice: March 6, 1997.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of amendment request: November 6, 1996.

Description of amendment request: The proposed amendments would revise the Technical Specifications governing the cooling water system. The changes are proposed to improve plant operation based on operational experience with the vertical motor-driven cooling water pump. The changes are also proposed to incorporate information gathered by the licensee during its self-assessment Service Water System Operational Performance Inspection (SWSOPI) completed in late 1995.

Date of individual notice in the Federal Register: January 29, 1997 (62 FR 4338).

Expiration date of individual notice: February 28, 1997.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of amendment requests: January 29, 1997.

Description of amendment requests: The proposed amendments would change the Bases for Technical Specifications and the licensing basis for the Operating Licenses relating to the cooling water system emergency intake line flow capacity. The licensee determined through testing that the emergency intake line flow capacity was less than the design value stated in the Updated Final Safety Analysis Report. The proposed changes reflect the use of operator actions to control cooling water system flow following a seismic event. The proposed changes also reclassify the intake canal for use during a seismic event, which would be an additional source of cooling water during a seismic event.

Date of individual notice in the Federal Register: February 7, 1997 (62 FR 5857).

Expiration date of individual notice: March 10, 1997. NSHC comments: February 24, 1997.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey Date of amendment request: January 31, 1997.

Brief description of amendment request: The amendment would make changes to Technical Specification (TS) 3.4.3, ''Relief Valves,'' for Salem Unit 1, and TS 3.4.5, ''Relief Valves,'' for Salem Unit 2, to ensure that the automatic capability of the power operated relief valves to relieve pressure is maintained when these valves are isolated by closure of the block valves.

Date of publication of individual notice in Federal Register: February 7, 1997 (62 FR 5861).

Expiration date of individual notice: March 10, 1997.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2: Hamilton County, Tennessee.

Date of application for amendments: October 18, 1996.

Description of amendments request: Amend Technical Specifications to permanently incorporate new requirements associated with steam generator tube inspections and repair. The requirements provide alternate

steam generator tube plugging criteria at the tube support plate intersections.

Date of publication of individual notice in the Federal Register: February 11, 1997 (62 FR 6276).

Expiration date of individual notice: March 13, 1997.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks: Manitowoc County, Wisconsin.

Date of amendment requests: September 19, 1996, as supplemented November 18, 1996, and revised January 13 and January 27, 1997.

Description of amendment requests: The proposed amendments would change Technical Specification requirements related to the low temperature overpressure protection (LTOP) system. Specifically, the reactor coolant system (RCS) temperature below which LTOP is required to be enabled and the temperature below which one high pressure safety injection pump is required to be rendered inoperable would be changed from less than 275 degrees Fahrenheit to less than 355 degrees Fahrenheit. Additionally, the restriction of ''less than the minimum pressurization temperature for the inservice pressure test as defined in Figure 15.3.1–1'' would be deleted and the specific temperature limit of less than 355 degrees Fahrenheit would be specified. The setpoint for the pressurizer power-operated relief valves (PORVs) would be changed from less than or equal to 425 pounds per square inch gage (psig) to less than or equal to 440 psig to allow for instrument inaccuracies and increased margin allowed by the use of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code Case N–514. These modified requirements for LTOP ensure that RCS materials meet the requirements of Title 10 of the Code of Federal Regulations, § 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' (10 CFR 50.60) in accordance with 10 CFR Part 50, Appendices G and H, and in accordance with the exemption granted on January 27, 1997, which allows the use of ASME Code Case N–514 as an acceptable alternative. Finally, editorial changes would be made to rename the ''Overpressure Mitigating System'' to the ''Low Temperature Overpressure Protection System.'' The September 19, 1996, application was previously noticed in the Federal Register on October 1, 1996 (61 FR 51308).

Date of individual notice in the Federal Register: February 4, 1997 (62 FR 5256).

Expiration date of individual notice: March 6, 1997. NSHC comments February 19, 1997.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of application for amendments: November 26, 1996.

Brief description of amendments: The amendments adopt Option B of 10 CFR Part 50, Appendix J to require Type B and Type C containment leakage testing to be performed on a performance-based testing schedule.

Date of issuance: February 11, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 219 and 196.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 2, 1997 (62 FR 123).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated February 11, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts.

Date of application for amendment: April 25, 1996, as supplemented December 23, 1996.

Brief description of amendment: The amendment will revise the definition of Operable-Operability, revise Technical Specifications (TSs) and associated Bases Section for TS 3.9.B.2 and 3.9.B.3, ''Auxiliary Electrical System,'' TS 3.4.B.1, ''Standby Liquid Control System,'' TSs 3.7.b.1.a, c, and e, and 3.7.b.2.a, c, and e, ''Standby Gas Treatment System and Control Room High Efficiency Air Filtration System,'' and TSs. 4.5.F.1, ''Core and Containment Cooling Systems,'' and delete TS 3.7.b.1.f, ''Standby Gas Treatment System and Control Room High Efficiency Air Filtration System.''

Date of issuance: February 10, 1997.

Effective date: February 10, 1997.

Amendment No.: 170.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 19, 1996 (61 FR 31172).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–

455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: August 2, 1996.

Brief description of amendments: The amendments eliminate License Condition 2.C.(16) from Facility Operating License NPF–37; License Condition 2.C.(5) from Facility Operating License NPF–66; License Condition 2.C.(6) from Facility Operating License NPF–72 and License Condition 2.C.(5) from Facility Operating License NPF–77 that require the licensee to conduct additional corrosion testing of sleeved steam generator tubes.

Date of issuance: February 12, 1997.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 85 to NPF–37, 85 to NPF–66, 77 to NPF–72, and 77 to NPF–77.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revise the licenses.

Date of initial notice in Federal Register: September 25, 1996 (61 FR 50340).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.

Date of application for amendments: November 26, 1996, as supplemented December 17, 1996

Brief description of amendments: The amendments revise Technical Specification 3.8.2.1 to allow a one-time change to replace the existing 125-volt AT&T high specific gravity round cell battery banks with the conventional low specific gravity cell battery banks.

Date of issuance: February 7, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 172 and 154.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 13, 1996 (61 FR 65605).

The December 17, 1996, letter did not change the scope of the November 26, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina 28223–0001.

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: August 29, 1996.

Brief description of amendment: The amendment revises the Technical Requirements Manual (TRM) to change the reactor pressure vessel surveillance capsule withdrawal schedule for the River Bend Station. The first capsule will be withdrawn at 10.4 effective full power years (EFPY) rather than at 6 EFPY.

Date of issuance: February 13, 1997.

Effective date: February 13, 1997.

Amendment No.: 92.

Facility Operating License No. NPF–47. The amendment revised the Technical Requirements Manual.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55034) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1997.

No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: June 27, 1996.

Brief description of amendment: The amendment modifies TS 3/4.3.3.6, ''Accident Monitoring Instrumentation,'' to reflect the Combution Engineering improved Standard Technical Specification (STS) approved and issued as NUREG–1432. This amendment revises the TS to include Accident Monitoring Instrumentation recommended in Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Plants to Assess Plant Conditions During and Following an Accident,'' Revision 3.

Date of issuance: February 12, 1997.

Effective date: February 12, 1997, to be implemented within 90 days.

Amendment No.: 122.

Facility Operating License No. NPF–38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1996 (61 FR 40017).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: July 25, 1996, as supplemented by letter dated January 27, 1997.

Brief description of amendment: The amendment changes the Appendix A Technical Specifications by modifying TS 3/4.7.4, ''Ultimate Heat Sink,'' to incorporate more restrictive fan operability requirements and lower the maximum allowed basin temperature.

Date of issuance: February 13, 1997.

Effective date: February 13, 1997.

Amendment No.: 123.

Facility Operating License No. NPF–38. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 19, 1996 (61 FR 58903).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida.

Date of application for amendments: October 30, 1996.

Brief description of amendments: These amendments revise the St. Lucie Technical Specifications to remove inconsistencies between the definition of Core Alterations and the Applicability, Action and Surveillance requirements of two specifications relating to water level and containment

isolation systems during refueling operations.

Date of Issuance: February 10, 1997.

Effective Date: February 10, 1997.

Amendment Nos.: 148 and 87.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64386).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida.

Date of application for amendment: October 28, 1996.

Brief description of amendment: The amendments consist of changes to the Technical Specifications (TS) in response to your applications, both dated October 28, 1996, regarding containment leakage tests and removal of certain component lists from the TS.

Date of Issuance: February 10, 1997.

Effective Date: February 10, 1997.

Amendment Nos.: 149 and 88.

Facility Operating License No. NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: (61 FR 64386) December 4, 1996. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida.

Date of application for amendments: December 17, 1996.

Brief description of amendments: Revision to Technical Specification (TS) 4.4.10 regarding reactor coolant pump flywheel inspection intervals.

Date of issuance: February 11, 1997.

Effective date: February 11, 1997.

Amendment Nos.: 193 and 187.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: January 10, 1997 (62 FR 1476). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York.

Date of application for amendment: July 16, 1996.

Brief description of amendment: The amendment changes the Technical Specifications to permit the use of 10 CFR Part 50, Appendix J, Option B, Performance-Based Containment Leakage Rate Testing in accordance with the implementation guidance in NRC's Regulatory Guide 1.163 dated September 1995.

Date of issuance: February 10, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 159.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 9, 1996 (61 FR 52965). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of application for amendments: August 15, 1996.

Brief description of amendments: The amendments revise the containment cooling systems limiting conditions for operation technical specifications to bring them into conformance with recently completed system analyses by no longer permitting both containment spray pumps to be inoperable at the same time.

Date of issuance: February 10, 1997.

Effective date: February 10, 1997, with full implementation within 30 days.

Amendment Nos.: 125 and 117.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64388).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of application for amendments: November 25, 1996.

Brief description of amendments: These amendments revise the wording in TS Section 4.8.1.1.2.e.2 and the associated TS Bases Section 3/4.8, to remove the specific reference to the Residual Heat Removal (RHR) pump motor and its corresponding kW rating value, and replace it with wording consistent with that specified in the Improved TS (i.e., NUREG–1433, Revision 1, ''Standard Technical Specifications General Electric Plants,'' dated April 1995).

Date of issuance: February 4, 1997.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 121 and 85.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 18, 1996 (61 FR 66716).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of application for amendments: September 27, 1996.

Brief description of amendments: These amendments increase the reactor enclosure secondary containment maximum inleakage rate, and also impact secondary containment drawdown time and system flow rate assumptions, thereby, affecting charcoal filter bed efficiency and post accident dose analysis.

Date of issuance: February 11, 1997.

Effective date: Both units, as of the date of issuance, to be implemented within 30 days.

Amendment Nos.: 122 and 86.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64392).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Philadelphia Electric Company, Docket No. 50–353, Limerick GeneratingStation, Unit 2, Montgomery County, Pennsylvania.

Date of application for amendment: December 6, 1996, as supplemented by letters dated January 15, and 28, 1997.

Brief description of amendment: This amendment modifies Technical Specification (TS) Section 2.1 and its associated TS Bases to reflect the change in the Minimum Critical Power Ratio safety limit due to the use of GE13 fuel product line and the cycle-specific analysis performed by General Electric Company (GE), for LGS, Unit 2, Cycle 5.

Date of issuance: February 12, 1997.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 87.

Facility Operating License No. NPF–85. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 23, 1996 (61 FR 67582).

The January 15, and 28, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of application for amendments: June 10, 1996, as supplemented June 24, July 1, August 13, September 20, and October 17, 1996.

Brief description of amendments: The amendments change Technical Specifications 3/4.3.3.1, ''Radiation Monitoring Instrumentation,'' and 3/4.7.6, ''Control Room Emergency Air Conditioning System,'' to reflect a control room design in which the common Unit 1 and Unit 2 control room envelope is supplied by 2 one hundred percent capable Control Room Emergency Air Conditioning System trains.

Date of issuance: February 6, 1997.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 190 and 173.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 24, 1996 (61 FR 32468) The June 24, July 1, August 13, September 20, and October 17, 1996, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor expand the scope of the initial submittal as described in the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of application for amendments: May 31, 1996, as supplemented December 23, 1996.

Brief description of amendments: The amendments change the Technical Specification to (1) Revise the reactor vessel level indication system action statements, (2) revise the channel calibration definition, and (3) delete a requirement to install la jumper in the auxiliary feedwater actuation logic.

Date of issuance: February 6, 1997.

Effective date: Both units, as of its date of issuance, to be implemented within 60 days.

Amendment Nos.: 191 and 174.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 17, 1996 (61 FR 30641).

The December 23, 1996, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: November 15, 1996.

Brief Description of amendments: The amendments replace Containment Systems TS 3.6.2.2 for the Spray Additive System, with a new Emergency Core Cooling Systems (ECCS) TS 3.5.6 for the ECCS Recirculation Fluid pH Control System.

Date of issuance: February 3, 1997.

Effective date: As of the date of issuance to be implemented prior to Mode 4 for Unit 1 following the spring 1997 refueling outage; for Unit 2 following the spring 1998 refueling outage.

Amendment Nos.: 123 and 118.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: December 18, 1996 (61 FR 66718).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio.

Date of application for amendment: August 7, 1996.

Brief description of amendment: The amendment revises Technical Specification (TS) 1.0, ''Definitions,'' by defining a refueling interval to be [less than or equal to] 730 days; and revises TS 3/4.0, ''Applicability,'' TS 3/4.6.2.1, ''Containment Systems—Depressurization and Cooling Systems—Containment Spray System,'' and TS 3/4.6.3.1, ''Containment Systems—

Containment Isolation Valves,'' to reflect performing surveillance tests during a refueling interval rather than every 18 months.

Date of issuance: February 10, 1997.

Effective date: February 10, 1997, to be implemented not later than 120 days after issuance.

Amendment No.: 213.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 9, 1996 (61 FR 52970).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio.

Date of application for amendment: September 12, 1996.

Brief description of amendment: The amendment revised Technical Specifications (TS) 3/4.1.3.4, ''Reactivity Control Systems—Rod Drop Time,'' and TS 3/4.5.2, ''Emergency Core Cooling Systems—Tavg [greater than or equal to] 280°F,'' to change the surveillance test interval from every 18 months to each refueling interval ([less than or equal to] 730 days, nominally 24 months). Additionally, the amendment removed a footnote for TS 4.5.2.b that is no longer applicable.

Date of issuance: February 11, 1997.

Effective date: February 11, 1997, to be implemented not later than 120 days over issuance.

Amendment No.: 214.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 9, 1996.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 19th day of February 1997.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–4573 Filed 2–25–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Reapproval:

Rule 24b–2
SEC File No. 270–153
OMB Control No. 3235–0127

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collection for public comment.

Rule 24b–2 (17 CFR 240.25b–2) provides a procedure, whereby persons filing documents with the Commission may request confidential treatment of information contained in such documents, and may request Commission review of adverse staff determinations regarding the confidential treatment request.

Approximately 630 requests for confidential treatment are made per year. Applications pursuant to the rule are generally prepared in conjunction with the document for which confidential treatment is being requested. Based upon our review of the applications we have received, we believe that not more than 30 minutes of the time spent in preparing the entire filing may be attributed to the application required under Rule 24b–2. Thus, the total compliance burden is 315 hours. The approximate cost per hour is $100, resulting in a total cost of compliance for respondents of $31,500 per year (315 hours @$100).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 19, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4748 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22521; 813–152]

Partners Income Fund; Notice of Application

February 20, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Partners Income Fund (the ''Initial Partnership'').

RELEVANT ACT SECTIONS: Order requested under section 6(b).

SUMMARY OF APPLICATION: Applicant requests an order that would amend a prior order to permit the employer of certain employees' securities companies to invest in those companies on terms no more favorable than those available to eligible employees.

FILING DATES: The application was filed on August 6, 1996 and amended on November 26, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 17, 1997 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, c/o McKinsey & Company,

Inc., Park Avenue Plaza, 55 East 52nd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. McKinsey & Co., Inc. (''McKinsey''), a New York corporation, is, together with its majority owned subsidiaries, an internationally known business consulting and management firm that, with its affiliated companies, is engaged in various facets of the consulting business. The Initial Partnership, a general partnership organized under the laws of the State of New York, was organized by management group members of McKinsey. The Initial Partnership and other existing and future partnerships sponsored by McKinsey (collectively, the ''Partnerships'') are, or will be, employees' securities companies within the meaning of section 2(a)(13) of the Act and operate, or will operate, as closed-end management investment companies.

2. In an order issued on September 14, 1992 (the ''Original Order''), the SEC granted the Partnerships an exemption from all provisions of the Act except sections 7, 8(a), (9), certain provisions of section 17, sections 36 through 53, and the rules and regulations relating to those sections.[1] The Initial Partnership is currently the only entity relying on the Original Order. Applicant requests that the Original Order be amended to permit McKinsey to invest in a Partnership on terms no more favorable than those on which Eligible Employees[2] may invest. Applicant states that the purpose of the Partnerships, their operation and the other relevant facts remain materially as described in the original application (''Original Application'').

3. Condition 2(a) of the notice of the Original Order states that ''the Partnership will not make any investment in which McKinsey is a participant * * * other than (i) as general partnership in a Partnership organized as a limited partnership, to the limited and *pro rata* extent described in the application.''[3] Applicant believes that this condition could be read as prohibiting McKinsey from investing at all in general partnerships (such as the Initial Partnership) and limiting McKinsey's ability to invest in limited partnerships to 1% of capital accounts.

4. Applicant explains that, at the time of the Original Application, it was not contemplated that McKinsey would invest in the Partnerships other than as stated in condition 2(a)(i). Applicant states that McKinsey has now determined that, from time to time, it will have excess funds available for investment, and would like to be able to invest in the Initial Partnership and Subsequent Partnerships on terms no more favorable than those available to other investors therein. Applicant contends that investments by McKinsey in a Partnership should promote the community of interests among the employer and employee investors in the Partnership.

5. Applicant represents that McKinsey would invest in a Partnership only where it had determined that the Partnership's investment objective was consistent with its own investment plans for its funds. A Partnership will permit McKinsey to invest in such Partnership only if (1) The Fairness Determining Body[4] of such Partnership determines, at the time of each such investment by the McKinsey entity, that the terms of such investment are no more favorable to the McKinsey entity than to other investors and that such Partnership will be able to invest such funds in accordance with the Partnership's investment objective and policies without any material adverse effect on the other partners in such Partnership, and such Partnership will refuse to accept any such McKinsey investment to the extent such determination cannot be made; (2) the McKinsey entity proposing to make the investment sends a notice of the proposed investment and its approximate amount to the partners of such Partnership a reasonable time before the relevant deadline for partners or other Eligible Employees to invest (or, if later, the deadline to cancel an investment commitment already made); and (3) the McKinsey entity making the investment commits not to redeem any portion of its investment in a Partnership unless it has given reasonable (but not less than 7 days') notice to the other partners in such Partnership prior to the date any similar redemption notice from such other partners is due.

6. Applicant requests an order amending the Original Order to permit McKinsey to invest in a Partnership on terms no more favorable than those available to the Eligible Employees and pursuant to the same relief from the act and the rules and regulations thereunder as in the Original Order, but subject to a modification of one condition. The requested modification would be accomplished by deleting from condition 2(a) the phrase ''(i) as general partner in a Partnership organized as a limited partnership, to the limited and *pro rata* extent described in the application'' and replacing it with ''(i) to the extent McKinsey may be a partner in a Partnership''.

Applicant's Condition

Applicant agrees to comply with all of the terms and conditions of the Original Order except that condition 2(a) of the notice of the Original Order is amended and restated to read: ''(i) to the extent McKinsey may be a partner in a Partnership''.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4750 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[1] See Investment Company Act Release No. 18897 and Investment Advisers Act Release No. 1323 (August 17, 1992) (notice), and Investment Company Act Release No. 18948 and Investment Advisers Act Release No. 1335 (September 14, 1992) (order). The Original Order also granted an exemption under section 206A of the Investment Advisers Act from one disclosure requirement of Form ADV.

[2] The Original Application stated that the opportunity to become a partner in the Partnerships would be offered only to ''Eligible Employees'' of McKinsey. Eligible Employees were defined as: (i) Directors, Principals and Administrative Shareholders, all of whom are owners of common shares of McKinsey, (ii) ''retired'' Directors, Principals and Administrative Shareholders subject to certain limitations, (iii) a very small number, not more than ten at any one time (*i.e.*, for all Partnerships in existence), of non-management group members responsible for administering the Partnerships and employee benefit plans for McKinsey, and (iv) a very small number of other employees (*i.e.*, for all Partnerships in existence), determined to have the degree of sophistication, access to the management of the partnerships and financial resources comparable to the individuals in clause (i).

[3] The Original Application stated that the general partner in a limited partnership generally must invest at least 1% of total positive capital account balances in each Partnership organized as a limited partnership (up to $500,000 per Partnership), and must maintain this investment at a specified level for the life of each such Partnership.

[4] The Original Application describes the Fairness Determining Body as ''consisting of members of the Advisory Committee or Management Committee [as such terms are defined in the Original Application], as the case may be, of that Partnership.''

[Investment Company Act Release No. 22519; 811–1149]

Pennsylvania Mutual Fund; Notice of Application

February 19, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Pennsylvania Mutual Fund.

RELEVANT ACT SECTIONS: Order requested under section 8(f).

FILING DATES: The application was filed on September 20, 1996, and amended on February 6, 1997.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 14, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Quest Advisory Corp., 1414 Avenue of the Americas, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered open-end management investment company, is organized as a business trust which is registered under the Delaware Business Trust Act. On or about January 31, 1962, applicant registered under the Act. On March 21, 1962, applicant filed a registration statement under the Securities Act of 1933 which became effective August 17, 1962, and subsequently made a public offering of its shares.

2. On April 18, 1996, applicant's trustees approved an Agreement and Plan of Merger (''Plan''), under which all of the assets and debts of the applicant would be transferred to the Pennsylvania Mutual Fund series of The Royce Fund, a Delaware business trust registered under the Act as an open-end management investment company, in exchange for shares of the Pennsylvania Mutual Fund series of The Royce Fund. Pursuant to rule 17a–8 under the Act,[1] applicant's trustees found that the Plan was in the best interests of applicant and that the interests of the existing shareholders would not be diluted as a result of the proposed reorganization.

3. As of June 27, 1996, applicant had one class of shares, consisting of 56,045,686.017 shares outstanding with a net asset value of $8.15 per share and an aggregate net asset value of $456,772,341.03.

4. Effective June 28, 1996, applicant transferred its assets to the Pennsylvania Mutual Fund series of The Royce Fund. In total, shareholders of applicant received shares of the Pennsylvania Mutual Fund series of The Royce Fund having an aggregate net asset value equal to applicant's net asset value at the time of the reorganization.

5. Expenses incurred in connection with the Plan consisted of legal fees, postage, and registration in some states and totaled $72,201.32. Pursuant to the Plan, expenses were shared by applicant and The Royce Fund in proportion to their respective assets. Accordingly, applicant paid $10,744.66 for registration and filing fees, $900.85 for postage, and $26,973.81 in legal fees. The Royce Fund incurred the balance, with expenses being allocated among the series of The Royce Fund, not including the newly-created Pennsylvania Mutual Fund series.

6. As of the date of filing of the original application, applicant had no shareholders, assets or liabilities, and was not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. On June 28, 1996, applicant was a party to a Certificate of Merger filed with the State of Delaware.

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4670 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38314; File No. SR–MBSCC–96–08]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Liens on Participants' Property

February 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 20, 1996, the MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MRSCC–96–08) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. On January 3, 1997, and January 14, 1997, MBSCC filed amendments to the proposed rule change.[2] 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 proposed rule change modifies MBSCC's rules to explicitly state that MBSCC has a lien on all property placed in MBSCC's possession by its participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] Letters from Julie Beyers, Associate Counsel, MBSCC (January 3, 1997, and January 14, 1997).

[3] The Commission has modified the text of the summaries prepared by MBSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify MBSCC's rules to explicitly state that MBSCC has a lien on all property placed in its possession by its participants. Unlike other clearing organizations, MBSCC's rules do not contain specific language stating that MBSCC has such a lien.[4] However, according to MBSCC, MBSCC always intended to have a lien on all property placed in its possession by its participants. Therefore, in order to clarify this issue, the proposed rule change adds language providing MBSCC with assurances that, in the event one of its participants fails to discharge its liabilities, MBSCC will have first priority with respect to the participant's property in MBSCC's possession. The proposed rule change also revises MBSCC's rules to clarify that any cash received with respect to any deposits to MBSCC's participants fund and not yet distributed to a participant is available to MBSCC for satisfaction of participant liabilities.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[5] and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 Room, 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 MBSCC. All submissions should refer to the file number SR–MBSCC–96–08 and should be submitted by March 19, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4671 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[4] For example, the rules of the National Securities Clearing Corporation (''NSCC'') and the International Securities Clearing Corporation (''ISCC'') provide NSCC and ISCC with liens on property placed in their possession by their participants. The language contained in the present proposed rule change is substantially similar to the language contained in NSCC's and ISCC's respective rules. NSCC Rule 18, Section 2(f) and ISCC Rule 18, Section 3.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[(Release No. 34–38313); File No. SR–PTC–96–06]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Authorize the Release of Clearing Data

February 19, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on November 22, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by PTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies Article VI of PTC's rules to add a new Rule 14 which authorizes PTC to release transaction and other data relating to participants obtained by PTC in the normal course of business.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify Article VI of PTC's rules to add a new Rule 14 which authorizes PTC to release transaction and other data relating to participants obtained by PTC in the normal course of its business. The rule will permit PTC to disclose such data to (1) regulatory, self-regulatory, other similar organizations, (2) clearing organizations which are under the oversight of the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by PTC.

Commodity Futures Trading Commission, and (3) to other entities as may be authorized by a participant. The proposed rule change will allow PTC to participate in the National Securities Clearing Corporation's (''NSCC'') Collateral Management Service (''CMS'')[3] and to provide information to the CMS database regarding PTC's participants' net debit and credit balances, participants' fund deposits, including excess (deficit) amounts, and comprehensive data on underlying collateral.

PTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it sets forth PTC's responsibilities and obligations with regard to releasing participant's clearing data and facilitates PTC's participation in the CMS database by permitting PTC to provide participant information to the CMS database.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impact or impose a 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 have been solicited or received. PTC will notify the Commission of any written comments received by PTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The Commission believes the proposed rule change is consistent with PTC's obligation under Section 17A(b)(3)(F) because the proposal sets forth PTC's responsibilities and obligations with regard to releasing participants' clearing data and should facilitate PTC's participation in NSCC's CMS by allowing PTC to provide participant information to NSCC for use in its CMS. PTC's and its participants' participation in NSCC's CMS should help PTC and other clearing agencies to better monitor their clearing members' clearing fund, margin, and other similar required deposits that protect the clearing agencies against loss should a member default on its obligations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because accelerated approval will allow PTC to immediately participate in NSCC's CMS thus allowing both PTC and other clearing agency participants in the CMS to benefit from the data contained in CMS regarding common participants.

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 also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–96–06 and should be submitted by March 19, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–96–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4751 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[3] Securities Exchange Act Release No. 35809 (June 5, 1995), 60 FR 30912 [File No. SR–NSCC–95–06] (order approving proposed rule change establishing the CMS).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–38318; File No. SR–SCCP–96–14]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Implementing a Collection Service for Regulatory Fees

February 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 6, 1997, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by SCCP. 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 proposed rule change will permit SCCP to act as a collection agent for the National Association of Securities Dealers (''NASD'') for Section 31 fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

SCCP proposes to serve as a collection agent for the NASD for Section 31 fees as required in the National Securities Markets Improvement Act of 1996.[3] Section 31 fees will apply to all domestic and foreign securities listed on the NASDAQ Stock Market with the exception of convertible debt. Upon its implementation, the fee will be 1/300th of one percent based upon the aggregate dollar amount of sales transacted by or through any member other than those

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Pub. L. 104–920, 110 Stat. 3416 (1996).

sales consummated on a securities exchange subject to last-sale reporting.

On a monthly basis, the NASD will calculate the Section 31 fees for each NASD member clearing firm based upon the transaction data submitted to the NASD's Automated Confirmation Transaction Service (''ACT''). The NASD will generate customer invoices and an invoice summary register that it will deliver to SCCP immediately following the end of each month. Upon receipt, SCCP will distribute the NASD generated invoices to NASD clearing firms that have a primary clearing relationship with SCCP. SCCP will collect each member's Section 31 fee as a part of SCCP's normal settlement process. The day following collection of the Section 31 fees, SCCP will remit a check to the NASD for the total amount collected minus a $100 service charge.

SCCP states that proposed collection procedures comply with Section 17A of the Act because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(A) of the Act [4] requires that a clearing agency is organized and has the capacity to comply with the provisions of this title and the rule and regulations thereunder. The Commission believes that SCCP's proposed rule change is consistent with this section because the proposed rule change should facilitate the NASD in fulfilling its obligation to collect Section 31 fees under the National Securities Markets Improvement Act of 1996.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the proposal will permit SCCP to immediately begin collecting these Section 31 fees for the NASD.

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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at SCCP. All submissions should refer to File No. SR–SCCP–96–14 and should be submitted by March 19, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–96–14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–4749 Filed 2–25–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(A).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2510]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 22, 1997 at 10:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 11:30 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in October 1996 and the announcement of gifts and loans of furnishings as well as financial contributions for calendar year 1996. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, March 17, 1997, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 7, 1997.

Gail F. Serfaty,

Vice Chairman, Fine Arts Committee.

[FR Doc. 97–4746 Filed 2–25–97; 8:45 am]

BILLING CODE 4710–38–M

[Public Notice No. 2511]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea; Working Group on Bulk Liquids and Gases; Notice of Meeting

The Working Group on Bulk Liquids and Gases (BLG) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 am on Monday, March 24, 1997 in Room 6319, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Second Session of the Subcommittee on Bulk Liquids and Gases of the International Maritime Organization (IMO) which is scheduled for April 7–11, 1997, at the IMO Headquarters in London.

The agenda items of particular interest:

a. Tanker pump-room safety.

b. Revision of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78) regulations I/22 to 24 in the light of the probabilistic methodology for oil outflow analysis.

c. Review of Annexes I and II of MARPOL 73/78.

d. Revision of carriage requirements for carbon disulfide in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

e. Requirements for personal protection involved in transportation of cargoes containing toxic substances in oil tankers.

f. Amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk and the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk.

g. Revision of chapter 8 of the IBC Code in the light of the revised SOLAS regulation II–2/59.

h. Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments.

i. Assessment of alternative tanker designs.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander K. S. Cook, U.S. Coast Guard (G–MSO–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: February 12, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–4745 Filed 2–25–97; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States Pacific Trade and Investment Policy Commission

Notice of Meeting of the Commission on United States Pacific Trade and Investment Policy

AGENCY: Commission on United States—Pacific Trade and Investment Policy/ Office of the United States Trade Representative.

ACTION: Notice that the next meeting of the Commission on United States—Pacific Trade and Investment Policy is scheduled for February 28, 1997 from 9:30 a.m. to 5:30 p.m. This meeting will be open to the public from 9:30 to 12:00, closed to the public during a working luncheon from 12:00 to 1:30 p.m. and open to the public from 1:30 to 5:30.

SUMMARY: The Commission on United States—Pacific Trade and Investment Policy will hold its next meeting on February 28, 1997 from 9:30 a.m. to 5:30 p.m. These meetings will be open to the public from 9:30 a.m. to 12:00, closed to the public during a working luncheon from 12:00 to 1:30 p.m. and open to the public from 1:30 to 5:30 p.m. These meetings will focus on finalization of the Commission's report to the Presidednt and the process for releasing the report. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, the USTR has determined that portions of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: This meeting is scheduled for February 28, 1997, unless otherwise notified.

ADDRESSES: The meetings will be held at the U.S. Department of Commerce, 14th and Constitution Avenues, N.W., Washington, D.C., Room 6029, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, Executive Director of the Commission on United States—Pacific Trade and Investment Policy, Room 400, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395–9679.

Nancy Adams,

Executive Director, Commission on United States—Pacific Trade and Investment Policy.

Charlene Barshefsky,

United States Trade Representative, Acting.

[FR Doc. 97–4937 Filed 2–24–97; 1:53 pm]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8–97–002]

Coast Guard and Army Corps of Engineers Marine Industry Navigation Conference

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard and the Army Corps of Engineers are sponsoring a Marine Industry Navigation Conference in Louisville, Kentucky. This notice announces the event that is open to the public.

DATES: The conference will be held on March 4 & 5, 1997 from 8:30 a.m. to 7:30 p.m. on March 4 and 8:30 a.m. to 5:00 p.m., on March 5.

ADDRESSES: The Galt House Hotel, 140 North Fourth Street, Louisville, KY 40202.

FOR FURTHER INFORMATION CONTACT: YN1 David Orzechowski or Commander Michael L. Schafersman, United States Coast Guard, Director, Western Rivers Operations, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is: (314) 539–3900 (Ext 421/396).

SUPPLEMENTARY INFORMATION: The Marine Industry Navigation Conference provides an open exchange of information, ideas and opinions on matters of mutual interest or concern to the inland marine community, the Corps of Engineers and the Coast Guard. Members of the public are invited to attend this conference. There is no charge to attend this conference, or for the handouts and printed material which will be made available to all conference attendees. Coffee and refreshments and meals during the convention (2 lunches and 1 dinner) may be purchased by conference attendees. The cost of this service will be $100 and will be collected during the registration session at the Galt House. Attendees may participate in all sessions of the conference, including attending the luncheon address, without paying for the meal service.

Proposed Conference Agenda

Monday, March 3, 1997.

5:30–7:30 p.m. (Preregistration).

Day 1—Coast Guard Topics

Tuesday, March 4, 1997.

7:00 Registration continues.

8:30 Welcome address by COL HARRY L. SPEAR, JR., Commander, Louisville Engineer District. Opening Remarks by RADM TIMOTHY W. JOSIAH; Commander, Eighth Coast Guard District; COL ALEXANDER R. JANSEN, Commander, Ohio River Division; MR. NORB WHITLOCK, American Commercial Barge Lines; MS. K. C. STANLEY-LYNN, National President, Passenger Vessel Association.

9:15 General Session: Prevention Through People.

10:00 Break.

10:30 Bridge update; Drug & Alcohol Program; Commercial and Recreation Vessel Safety Program; Coast Guard and American Waterways Operators Regional Steering Report.

11:45 Lunch: Awards; Speaker: VICE ADMIRAL R. D. HERR, Vice Commandant, U.S. Coast Guard.

1:15 Break

1:45 Panel Session Topics: Towing Industry Panel; Fire Safety on Towing Vessels; Cooperative Boarding Program; Deckhand Fatality Quality Act Team Report; New Licensing & Manning Rules; Navigation Safety; Marine Personnel Advisory Committee—Navigation Safety Advisory Committee—Towing Safety Advisory Committee—Chemical Technical Advisory Committee (handouts).

1:45 Passenger Vessel Panel Topics: Passenger Vessel Industry Update; Passenger Vessels vs. Gaming Vessels; National Streamlined Inspections Program; Local Streamlined Inspection Program; High Capacity Passenger Vessel

Contingency Drills; High Capacity Passenger Vessel Egress Quality Action Team Report.

3:45 Break

4:15 General Session: General Discussions.

4:45 Break

6:00 Round Table Discussions; Heavy Hors D'oeuvres, Cash Bar; Galt House Hotel.

Day 2—Corps of Engineers Topics

Wednesday, March 5, 1997.

7:45 Registration

8:30 Administrative Updates.

8:35 American Waterways Operators Update; The Association for the Development of Inland Navigation in America's Ohio Valley Update; Midwest Area Regional Committee 2000 Update.

9:00 Maritime Administration Study; Ohio River Mainstream Study; Missouri River Master Plan; Upper Mississippi River Study; Environmental Summit.

9:30 New Construction Update by River Segments to include innovative design. Specific Projects: Olmsted, Winfield, Lower Monongahela, Marmet, Kentucky Lock, & others.

10:00 Break.

10:30 New Construction—continued.

11:00 Lock Capacity Improvement Team Results.

11:30 Critical Operations & Maintenance; Backlog Items; Lock & Dam No. 27; Upper Tennessee River Locks; Chickamauga Lock.

12:00 Lunch: Washington, D.C. Update.

1:45 Summary of Operations & Maintenance Cost; Reduction Potential Results of Implementing Report; Industry's Involvement; Ways to Reduce Impact.

2:45 Electronic Charts, Navigation Chart Update, Vessel Traffic Service Louisville District; Digital Global Positional System Update.

3:30 Upper Mississippi River; Dredging-Preventive Maintenance.

4:00 Open discussion: COL ALEXANDER R. JANSEN and MR. NORB WHITLOCK.

Persons interested in attending the Marine Industry Navigation Conference may request registration forms or additional information on the conference activities and on events scheduled by other groups to coincide with the conference at the address provided above.

Dated: February 18, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–4767 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–14–M

[CGD 97–011]

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 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. The most recent was held on February 11, 1997. Several additional public meetings are planned.

DATES: The Coast Guard will sponsor a public meeting to be held on February 27, 1997, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC.

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.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–4766 Filed 2–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), gives notice of a proposed alteration to the system of records entitled ''Debt Collection Operations System -Treasury/FMS .014,''which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system was last published in its entirety in the Federal Register Vol. 60, page 56776 on November 9, 1995, and subsequently altered in the Federal Register Vol. 61, page 11939 on March 22, 1996.

DATES: Comments must be received no later than March 28, 1997. The proposed system of records will be effective April 7, 1997, unless FMS receives comments which would result in a contrary determination.

ADDRESS: Comments must be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW, Room 151, Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9a.m. and 4p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Debt Management Services, (202) 874–6859.

SUPPLEMENTARY INFORMATION: The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, enacted April 26, 1996, provides the Department of the Treasury (Treasury) with specific legislative authority and responsibility to collect and/or manage the collection of claims owed to the Federal Government. The DCIA also provides new government-wide debt collection tools such as administrative wage garnishment, public dissemination of delinquent debtor information, and authorizes the sale of debt to the private sector. The DCIA authorizes Treasury to collect claims, or facilitate the collection of claims, owed to States, Territories and Commonwealths of the United States, and the District of Columbia by offsetting Federal payments. Similarly, under the provisions of the DCIA, Treasury may enter into agreements with States, Territories, Commonwealths, and the District of Columbia to facilitate collection of debts owed to the Federal Government by

offset of State, Territory, Commonwealth and District of Columbia payments. Finally, the DCIA bars agencies from extending Federal financial assistance in the form of a Federal loan or loan guaranty if the applicant is delinquent on a Federal claim. Consistent with the DCIA, Executive Order 13019, signed by the President on September 28, 1996, directs Treasury to promptly take steps to facilitate:

(1) Offset of Federal payments to collect delinquent child support debts being enforced by States; and

(2) Denial of Federal credit in the form of a Federal loan or loan guaranty to persons delinquent on their child support debts. FMS is the Treasury bureau responsible for the implementation of the DCIA and the Executive Order.

For the reasons set forth in the preamble, FMS proposes to alter system of records Treasury/FMS .014, ''Debt Collection Operations System—Treasury/Financial Management Service'', as follows:

Treasury/FMS .014

SYSTEM NAME:

Debt Collection Operations System—Treasury/Financial Management Service.

SYSTEM LOCATION:

Description of change: The words ''Debt Collection Operations''are replaced with the words ''Debt Management Services''.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * *

Description of change: The following is added at the end thereof:

''Records are also maintained on individuals who are indebted to States, Territories and Commonwealths of the United States, and the District of Columbia, including records on individuals who owe past due support which is being enforced by a State, Territory, Commonwealth or the District of Columbia.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of changes:

The word ''agency'' in the first sentence is replaced by ''governmental entity'', and the words ''client agency'' in the second sentence are replaced by ''governmental entity''.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Description of change:

After ''* * * and the Deficit Reduction Act of 1984 (Pub. L. 98–369, as amended);'' insert ''The Debt Collection Improvement Act of 1996 (Pub. L. 104–134,§ 31001); * * *''

PURPOSE(S):

Description of change:

The first sentence is revised to read,''The purpose of this system is to maintain records of individuals and entities that are: (1) Indebted to the Financial Management Service (FMS); (2) indebted to the various Federal Government departments and agencies and whose accounts are being serviced or collected by FMS; and (3) indebted to States, Territories and Commonwealths of the United States, and the District of Columbia (including past due child support debts being enforced by the States, Territories, Commonwealths or the District of Columbia).''

* * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes:

The words ''to the U.S. Government'' and ''and'' are removed in routine use (7). The period ''.'' at the end of routine use (8) is replaced with a semicolon '';'', and the following routine uses are added at the end thereof:

''(9) Any Federal, State, or local agency, or to the public for the purpose of collecting on a delinquent debt through the use of debt collection tools authorized under the Debt Collection Improvement Act of 1996 such as referring the debt to debt collection centers, administrative wage garnishment, public dissemination of debtor information, or selling the debt; or any other legitimate debt collection purpose;

''(10) Any Federal, State or local agency for the purpose of accounting on or reporting the status of debts for which the Federal, State or local agency has a financial or other legitimate need for the information in the performance of official duties;

''(11) Any Federal agency or its agents for the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual delinquent on a Federal claim, or delinquent on a child support claim referred to FMS for administrative offset; and

''(12) Any State, Territory or Commonwealth of the United States, or the District of Columbia to collect a claim owed to the Federal Government or to assist in the collection of a State, Commonwealth, Territory or District of Columbia claim pursuant to a reciprocal agreement between FMS and the State, Territory, Commonwealth or the District of Columbia.''

* * * * *

Dated: February 18, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 97–4691 Filed 2–25–97; 8:45 am]

BILLING CODE: 4810–35–F

Federal Register

Wednesday
February 26, 1997

Part II

Department of Commerce

International Trade Administration

19 CFR Part 351
Countervailing Duties; Proposed Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 950306068–6185–03]

RIN 0625–AA45

Countervailing Duties

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for public comments.

SUMMARY: The Department of Commerce (''the Department'') proposes to establish regulations to conform the Department's existing countervailing duty regulations to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. In addition to conforming changes, the Department has sought to issue regulations that: (1) Where appropriate and feasible, translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; (2) simplify and streamline the Department's administration of countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles; and (3) codify certain administrative practices determined to be appropriate under the new statute and under the President's Regulatory Reform Initiative.

DATES: Written comments will be due on April 28, 1997.

ADDRESSES: Address written comments to Robert S. LaRussa, Acting Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230. Comments should be addressed: Attention: Proposed Regulations/Uruguay Round Agreements Act—Countervailing Duties. Each person submitting a comment is requested to include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Yeske at (202) 482–0189 or Penelope Naas at (202) 482-3534.

SUPPLEMENTARY INFORMATION:

Background

This notice, which deals with countervailing duty (''CVD'') methodology, constitutes part of a larger process of developing regulations under the Uruguay Round Agreements Act (''URAA''). The process began when the Department took the unusual step of requesting advance public comments in order to ensure that, at the earliest possible stage, we could consider and take into account the views of the private sector entities that are affected by the antidumping (''AD'') and CVD laws. Following an extension of the comment period, on May 11, 1995, the Department published interim-final rules that dealt with a limited number of new or revised procedures resulting from the URAA. On February 8, 1996, the Department published proposed rules (''APO Regulations'') that, among other things, revised procedures relating to administrative protective orders in AD and CVD proceedings. Finally, on February 27, 1996, the Department published proposed rules dealing with AD and CVD procedures and AD methodology (''AD Proposed Regulations'').[1]

In these proposed regulations, the Department has continued to be guided by the objectives described in the AD Proposed Regulations. Specifically, these objectives are: (1) Conformity with the statutory amendments made by the URAA; (2) the elaboration through regulation of certain statements contained in the Statement of Administrative Action (''SAA''); [2] and (3) consistency with President Clinton's Regulatory Reform Initiative and his directive to identify and eliminate obsolete and burdensome regulations.

In the case of CVD methodology, the Department's existing ''regulations'' consist largely of the proposed regulations published in 1989 (''1989 Proposed Regulations'').[3] Because the Department never issued final rules, the 1989 Proposed Regulations were not binding on the Department or private parties. Nevertheless, to some extent both the Department and private parties relied on the 1989 Proposed Regulations as a restatement of the Department's CVD methodology as it existed at the time. Thus, notwithstanding statutory amendments made by the URAA and subsequent developments in the Department's administrative practice, the 1989 Proposed Regulations still serve as a point of departure for any new regulations dealing with CVD methodology.

As described in the AD Proposed Regulations, we have consolidated the AD and CVD regulations into a single part 351. For the most part, the regulations contained in this notice constitute subpart E of part 351. We anticipate that the consolidation of the AD and CVD regulations will make the regulations easier to use and, by reducing their sheer size, will make the regulations more accessible to the non-expert.

Comments—In General

The Department wishes to emphasize that the regulations contained in this notice are *proposed* regulations only. While they reflect our best judgment at this time regarding the appropriate style and content of regulations dealing with CVD methodology, we remain open-minded on the various issues raised herein. Therefore, we are very interested in receiving public comment on these proposed regulations. We have found the dialogue that commenced with the advance notice to be extremely useful, and we hope and expect that it will continue.

Comments—Format and Number of Copies

Each person submitting a comment should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments regarding these proposed regulations should be submitted in the following format: (1) Identify each comment by reference to the section and/or paragraph of these proposed

[1] The prior notices published by the Department as part of its URAA rulemaking activity are: (1) Advance Notice of Proposed Rulemaking and Request for Public Comments (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*), 60 FR 80 (Jan. 3, 1995); (2) Advance Notice of Proposed Rulemaking; Extension of Comment Period (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*), 60 FR 9802 (Feb. 22, 1995); (3) Interim Regulations; Request for Comments ((*Antidumping and Countervailing Duties*), 60 FR 25130 (May 11, 1995); (4) Proposed Rule; Request for Comments (*Antidumping and Countervailing Duty Proceedings; Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*), 61 FR 4826 (Feb. 8, 1996); (5) Notice of Proposed Rulemaking and Request for Public Comments (*Antidumping Duties; Countervailing Duties*), 61 FR 7308 (February 27, 1996); (6) Extension of Deadline to File Public Comments on Proposed Antidumping and Countervailing Duty Regulations and Announcement of Public Hearing (*Antidumping Duties; Countervailing Duties*), 61 FR 18122 (April 24, 1996); and Announcement of Opportunity to File Public Comments on the Public Hearing of Proposed Antidumping and Countervailing Duty Regulations (*Antidumping Duties; Countervailing Duties*), 61 FR 28821 (June 6, 1996).

[2] See, *Statement of Administrative Action accompanying H.R. 5110* (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994)).

[3] See Notice of Proposed Rulemaking and Request for Public Comments (*Countervailing Duties*), 54 FR 23366 (May 31, 1989).

regulations to which the comment pertains;[4] (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section ''summary of the comment.''

To help simplify the processing and distribution of comments, the Department encourages the submission of documents in electronic form accompanied by an original and two copies in paper form. We request that documents filed in electronic form be on DOS formatted 3.5″ diskettes and prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Please submit comments on a separate file on the diskette and identify each comment in the manner described in the preceding paragraph.

Comments received on diskette will be made available to the public on the Internet at the following address: http://www.ita.doc.gov/import_admin/records/.

In addition, the Department will make comments available to the public on 3.5″ diskettes, with specific instructions for accessing compressed data, at cost, and paper copies will be available for reading and photocopying in Room B–099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on the Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–0866.

Explanation of the Proposed Rules

Section 351.102

These proposed regulations add several definitions to § 351.102. Many of these definitions are identical (or virtually identical) to definitions contained in § 355.41 of the 1989 Proposed Regulations, and some are based on definitions contained in the Illustrative List of Export Subsidies (''Illustrative List'') annexed to the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). However, a few definitions warrant comment.

The definition of *firm* is based on § 355.41(a) of the 1989 Proposed Regulations, but an additional clause has been added to clarify that the purpose of this term is to serve as a shorthand expression for the recipient of an alleged subsidy. While other terms could be used, the use of the term ''firm'' in this manner has become an accepted part of CVD nomenclature.

Similarly, *government-provided* is used as a shorthand adjective to distinguish the act or practice being analyzed as a possible countervailable subsidy from the act or practice being used as a benchmark. As made clear in the regulation, the use of ''government-provided'' does not mean that a subsidy must be provided directly by a government.

Loan is defined to include forms of debt financing other than what one normally considers as a ''loan,'' such as bonds, overdrafts, etc. Again, this definition is intended as a shorthand expression in order to avoid repetitive use of more cumbersome phrases, such as ''loans or other debt instruments.''

In this regard, the Department considered codifying its approach with respect to so-called ''hybrid instruments,'' financial instruments that do not readily fall into the basic categories of grant, loan, or equity. In the 1993 steel determinations, *see Certain Cold-Rolled Carbon Steel Flat Products from Austria (General Issues Appendix)*, 58 FR 37062, 37254 (''*GIA*''), the Department developed a hierarchical approach for categorizing hybrid instruments, an approach that was sustained in *Geneva Steel* v. *United States*, 914 F. Supp. 563 (Ct. Int'l Trade 1996). However, notwithstanding this judicial imprimatur, the Department has relatively little experience with hybrid instruments. Therefore, although the Department has no present intention of deviating from the approach set forth in the *GIA*, the codification of this approach in the form of a regulation would be premature at this time.

Section 351.501

Section 351.501 restates very generally the subject matter of subpart E. To be a bit more specific, the arrangement of subpart E is as follows. After dealing with the specificity of domestic subsidies in § 351.502, §§ 351.503 through 351.512 deal with the identification and measurement of various general types of subsidy practices. Sections 351.513 through 351.519 focus on export subsidies, incorporating the appropriate standards from the Illustrative List. Section 351.520 deals with general export promotion activities of governments. Sections 351.521 through 351.523 deal with import substitution subsidies (currently designated as ''Reserved''), certain agricultural subsidies, and upstream subsidies, respectively. Section 351.524 sets forth rules regarding the calculation of an *ad valorem* subsidy rate and the attribution of a subsidy to a product. Finally, §§ 351.525 through 351.527 contain rules regarding program-wide changes, transnational subsidies, and the tax consequences of benefits, respectively.

The last sentence of § 351.501 acknowledges that subpart E does not address every possible type of subsidy practice. However, the same sentence provides that in dealing with alleged subsidies that are not expressly covered by these regulations, the Secretary will be guided by the underlying principles of the Act and subpart E.

In this regard, the Act and the SCM Agreement serve to eliminate much of the confusion and controversy surrounding the necessary elements of a countervailable subsidy. First, under section 771(5)(B) of the Act and Article 1.1(a) (1) and (2) of the SCM Agreement, there must be a financial contribution that a government provides either directly or indirectly, or an income or price support in the sense of Article XVI of GATT 1994. Although the precise parameters will have to be determined on a case-by-case basis, this element provides a framework for analysis that was previously missing.

Second, under section 771(5)(B) and Article 1.1(b) of the SCM Agreement, the financial contribution (or income or price support) must confer a benefit. Although the concept of a ''benefit to the recipient'' is not new to U.S. CVD law, in some cases the meaning of this concept had become obscured. The new law clarifies this concept and eliminates any possibility of confusing the ''benefit'' of a subsidy with the ''effect'' of a subsidy. In particular, section 771(5)(E) of the Act and Article 14 of the SCM Agreement, through their description of the various standards (or ''benchmarks'') used to identify and measure the benefits attributable to different types of subsidy practices, make clear that a benefit is conferred when a firm pays less for its ''inputs'' than it otherwise would pay in the absence of the government-provided input or earns more than it otherwise would earn. For example, when the amount that a firm pays on a government-provided loan is less than what the firm ''would pay on a comparable commercial loan that the (firm) could actually obtain on the market,'' the firm's cost of borrowing money is reduced. *See* section 771(5)(E)(ii) of the Act. Similarly, when a firm sells its goods to the government and ''such goods are purchased for more than adequate remuneration,'' the firm's revenues are increased beyond what it would otherwise earn. *See* section

[4] If a comment does not pertain to a particular proposed regulation, please clearly identify the comment as ''Other,'' followed by a brief description of the issue to which the comment pertains; *e.g.*, ''Other—Infrastructure.''

771(5)(E)(iv) of the Act. In neither instance need the Department do more than apply the test enumerated by the statute in order to find that a benefit has been conferred.

In this regard, when we talk about a firm paying less for its inputs than it otherwise would pay (or receiving more revenues than it otherwise would earn), we are referring to the lower price it pays to acquire the thing provided by the government, *i.e.*, money, a good, or a service. We do not mean to suggest, as has sometimes been argued, that one must consider the overall impact of government actions on a firm in determining whether a particular government action confers a benefit. Neither the statute nor the SCM Agreement supports such an analysis.

For example, assume that a government puts in place new environmental requirements that require a firm to purchase new equipment to adapt its facilities. Assume also that the government provides the firm with subsidies to purchase that new equipment, but the subsidies do not fully offset the total increase in the firm's costs; *i.e.*, the net effect of the new environmental requirements and the subsidies leaves the firm with costs that are higher than they previously were.

In this situation, section 771(5B)(D) of the Act, which deals with one form of non-countervailable subsidy, makes clear that a subsidy exists. Section 771(5B)(D) treats the imposition of new environmental requirements and the subsidization of compliance with those requirements as two separate actions. A subsidy that reduces a firm's cost of compliance remains a subsidy (subject, of course, to the statute's remaining tests for countervailability), even though the overall effect of the two government actions, taken together, may leave the firm with higher costs.

Thus, if there is a financial contribution and a firm pays less for an input than it otherwise would pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit element is concerned. The Department need not consider how a firm's behavior is altered when it receives a financial contribution that lowers its input costs or increases its revenues.

If there were any doubt on this score, section 771(5)(C) of the Act eliminates it by clarifying that the ''benefit'' and the ''effect'' of a subsidy are two different things. While, as stated above, there must be a benefit in order for a subsidy to exist, section 771(5)(C) expressly provides that the Department ''is not required to consider the effect of a subsidy in determining whether a subsidy exists.'' This message is driven home by the SAA at 256, which states that ''the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review.''

As stated above, a benefit exists where a firm pays less for an input than it otherwise would pay in the absence of the financial contribution (or receives revenues beyond the amount it otherwise would earn). By the same token, where a firm does not pay less for an input than it otherwise would pay (or its revenues are not increased) as a result of a financial contribution, it would be very difficult to contend that a benefit exists. However, we have not closed our minds here and we would welcome comment on this issue.

Finally, under section 771(5)(A) of the Act and Article 1.2 of the SCM Agreement, a subsidy must be specific in order to be countervailable. The ''specificity test'' is discussed in more detail below, but we note here that by clarifying the purpose of the specificity test and the manner in which it is to be applied, the URAA, the SAA and the SCM Agreement should serve to reduce the volume of litigation concerning this heavily litigated issue.

Regarding the coverage of subpart E, we should note two topics that are not addressed by these regulations: indirect subsidies (with the exception of upstream subsidies) and privatization. The topic of ''indirect subsidies'' refers generally to situations where a government provides a financial contribution through a private body, and involves the application of section 771(5)(B)(iii) of the Act. Several comments were received on this topic, including particular suggestions regarding the possible contents of a regulation. Although the issues raised by the commenters are important ones, we are not addressing them at this time. We note that the legislative history clearly calls for the Department to proceed on a case-by-case basis. See SAA at 255–56. Our decision not to address these comments serves, in part, to preserve this flexibility and discretion, and allows us the opportunity to request comments specifically pertaining to the factors we should consider in making our case-by-case determinations.

The topic of privatization typically involves situations where ownership of a government-owned firm is transferred to a private entity. Privatization raises the question of the extent to which previously bestowed subsidies which are allocated over time remain countervailable after the privatization, and involves the application of section 771(5)(F) of the Act, the new section in the URAA addressing this subject.

In these proposed regulations, we have not included a provision dealing with privatization. However, we are evaluating whether a regulation on this topic is appropriate. Therefore, in the discussion that follows, we describe and discuss certain issues that we believe are raised by section 771(5)(F). We begin with a review of the methods we have used to date for addressing prior subsidies and privatization. We then turn to the new legislation.

Agency Practice

Although there were earlier administrative precedents, the recent history of the privatization issue began in January 1993, with the Department's final CVD determinations in the *Lead and Bismuth* cases (see, in particular, *Certain Hot-rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 58 FR 6237). In those determinations, the Department ruled that the sale of a firm (or a ''productive unit'' of a firm), even if at arm's length, does not alter the countervailability of previously bestowed subsidies. The Department reasoned that it ''does not examine the impact of subsidies on particular assets or tie the benefit level of subsidies to changes in the company under investigation. Therefore, it follows that when a company sells a productive unit, the sale does nothing to alter the subsidies enjoyed by that productive unit.'' *Id.*, at 6240.

In the July 1993 final CVD determinations in the *Certain Steel* cases, the Department modified the approach taken in the *Lead and Bismuth* cases. The Department concluded that once a subsidy is bestowed, the Act precludes a reevaluation of the amount or countervailability of a subsidy based on subsequent events, such as a change in the ownership of a firm. The Department stated: ''Accordingly, whether subsidies convey a demonstrable competitive benefit upon recipients, in the year of receipt or any subsequent year, is irrelevant—the statute embodies the irrebutable presumption that subsidies confer a countervailable benefit upon goods produced by their recipients.'' The Department further ruled that ''a private party purchasing all or part of a government-owned company (*e.g.*, a productive unit) can repay prior subsidies on behalf of the company as

part or all of the sales price.'' *GIA* at 37262. Put differently, a portion of previously bestowed subsidies might not ''travel to a new home'' depending on the price paid for a firm by the buyer.

To determine the amount of previously bestowed subsidies that pass through to the privatized firm, the Department developed a repayment method. Under that method, the Department determines the amount of subsidies repaid based on a ratio of the privatized firm's subsidies to the firm's net worth over a period of time. Subsidies that are not repaid continue to benefit the merchandise produced by the privatized firm. *Id.*, at 37263. Only non-recurring subsidies (*i.e.*, subsidies allocated over time) are included in the pass through and repayment calculations.

New Law

In June, 1994, the U.S. Court of International Trade (''CIT'') overturned the Department's determinations in the *Lead and Bismuth* cases. In *Inland Steel Bar Co.* v. *United States*, 858 F. Supp. 179, *rev'd*, 86 F.3d 1174 (Fed. Cir. 1996) (''*Inland*''), and *Saarstahl AG* v. *United States*, 858 F. Supp. 187, *rev'd*, 78 F.3d 1539 (Fed. Cir. 1996) (''*Saarstahl*''), the CIT declared the Department's privatization methodology to be unlawful ''to the extent it states previously bestowed subsidies are passed through to a successor company sold in an arm's length transaction.'' This decision meant that if a firm is privatized in an arm's length transaction, previously bestowed subsidies are extinguished.

When the CIT issued its decisions in *Inland* and *Saarstahl*, the Administration and Congress were in the process of drafting, under ''fast track'' procedures, H.R. 5110, the bill that ultimately would become the URAA. As of June 1994, the draft CVD legislation did not contain any provisions that dealt expressly with the issue of privatization, and no such provisions were contemplated. However, following the CIT's decisions, a new provision was added that became section 771(5)(F) of the Act.

As enacted, section 771(5)(F) provides as follows:

> *Change in ownership*.—A change in the ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the (Department) that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

The SAA at 928 offered the following explanation of section 771(5)(F):

> Section 771(5)(F) provides that a change in the ownership of ''all or part of a foreign enterprise'' (*i.e.*, a firm or a division of a firm) or the productive assets of a firm, even if accomplished through an arm's-length transaction, does not by itself require Commerce to find that past countervailable subsidies received by the firm no longer continue to be countervailable. For purposes of section 771(5)(F), the term ''arm's-length transaction'' means a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.
>
> Section 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets to an unrelated party. Consequently, it is imperative that the implementing bill correct and prevent such an extreme interpretation.
>
> The issue of the privatization of a state-owned firm can be extremely complex and multifaceted. While it is the Administration's intent that Commerce retain the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies, Commerce must exercise this discretion carefully through its consideration of the facts of each case and its determination of the appropriate methodology to be applied.

In addition to this passage in the SAA, the Senate Report on the URAA stated as follows:

> The Committee believes that this provision serves the important purpose of making clear that the sale of a firm at ''arm's length'' does not automatically extinguish any previously-conferred subsidies. New section 771(5)(F) stands in contrast to such an interpretation, which would result in an end to the countervailability of prior subsidies otherwise allocable to the merchandise. The sale of subsidized goods or assets to an unrelated party should not in and of itself permit the avoidance of duties. The Commerce Department should continue to have the discretion to determine whether, and to what extent (if any), actions such as the ''privatization'' of a government-owned company actually serve to eliminate such subsidies. It is the Committee's expectation that Commerce will exercise this discretion carefully and make its determination based on the facts of each case, developing a methodology consistent with the principles of the countervailing duty statute.
>
> S. Rep. No. 412, 103d Cong., 2d Sess. 92 (1994).

Approach Under the New Law

Based on our reading of section 771(5)(F) and the legislative history of that provision, we believe that the new law overturns the approach adopted by the CIT in *Inland* and *Saarstahl*, *i.e.*, that an arm's length transaction, in and of itself, is sufficient to extinguish prior subsidies. We would further note that in March, 1996, the Court of Appeals for the Federal Circuit reversed the CIT's decision, holding that ''the [CIT] erred in holding that as a matter of law a subsidy cannot be passed through during an arm's length transaction'' (*Saarstahl, AG* v. *United States*, 78 F.3d 1539, 1544). Hence, under the pre- and post-URAA statute, the Department's position is that even if a privatization is accomplished by means of an arm's length transaction, previously bestowed subsidies are not automatically, and in all cases, extinguished.

By the same token, it has been suggested that the language in the SAA and the Senate Report directing Commerce to consider ''the facts of each case'' in determining whether and to what extent privatization of a government-owned firm eliminates any previously conferred subsidies may preclude an approach whereby all prior subsidies would automatically, and in all cases, be passed through to the privatized company.

Instead of establishing automatic rules in determining the extent to which prior subsidies pass through or are extinguished by privatization, a more flexible approach would be to examine a broad array of factors specific to the individual case. This may include examining the circumstances surrounding the privatization transaction, as well as the impact of prior subsidies on current market conditions.

Having said this, however, we do not believe that Congress intended that the Department's privatization determinations be made on an *ad hoc* basis. As stated in the Senate Report, it was expected that the Department would develop ''a methodology consistent with the principles of the countervailing duty statute.'' S. Rep. No. 412, 103d Cong., 2d Sess. 92 (1994). Thus, the question to which we now turn is what facts would be relevant to determining the effect that a change in ownership has on previously bestowed subsidies.

One starting point for consideration of the appropriate approach under the new law is the method previously adopted by the Department. As discussed above, we have recognized that privatization has some impact on previously bestowed subsidies and have employed a repayment formula to determine the extent to which those subsidies pass through to the privatized firm. We have indicated in recent cases our position

that the repayment method is permissible under the new law (see, in particular, Certain Hot-rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377, 58379. Some have questioned the Department's method for calculating the amount of repayment. For example, in computing the share of the sales price that repays past subsidies, the Department averages several years data on subsidies and the net worth of the firm.

- Should this average be weighted to give greater weight to the years immediately preceding the privatization? Or, should the average be abandoned and replaced with information on subsidies and net worth at the time of privatization?
- Are there other ways of determining whether repayment has occurred (*e.g.*, whether repayment must be made by the firm as opposed to the purchasers of the firm) and are there more accurate means of calculating such repayment?

Besides the facts that are relevant to the repayment method discussed above, there may be a number of considerations that should be evaluated in determining the extent to which previously bestowed subsidies are extinguished or passed through by means of privatization. For example, while the new statutory provision rules out the possibility that an arm's length transaction, in and of itself, is sufficient to extinguish past subsidies in all cases, it leaves open the question of what importance (if any) we should assign to the fact that a privatization does or does not occur at arm's length.

- Should the arm's length criterion alter the extent to which the Department considers previously bestowed subsidies to be countervailable with respect to merchandise produced by the privatized firm? Under the methodology currently applied by the Department, the presence or absence of an arm's length transaction does not affect our repayment calculation.
- In situations where the privatization transaction is not an arm's length transaction, is it more likely that prior subsidies pass through to the privatized company, or that a larger amount of the prior subsidies pass through? What factors would determine the extent, if any, to which prior subsidies pass through?
- Is it necessary for a privatization to be an arm's length transaction before the Department could even consider that previously bestowed subsidies are extinguished by the privatization? Conversely, if the privatization transaction is not at arm's length, should the Department even consider that any previously bestowed subsidies could have been extinguished?
- Under what circumstances and what privatization techniques does the transaction give rise to new subsidies to the purchasers? Would these new subsidies be in addition to any prior subsidies that pass through to the purchaser?

In addition to considering whether the privatization is an arm's length transaction, there may be other circumstances of the privatization transaction relevant to determining the extent to which previously bestowed subsidies pass through to the privatized firm. For example, it has been argued that when the privatization process occurs in a competitive market setting, the purchasers may be paying the full value of the company, including the current value of any previously bestowed subsidies.

- Can a competitive market setting, in and of itself, extinguish past subsidies? Under what circumstances would this occur?
- What elements might give rise to a competitive market setting and what is the relevance of those elements in determining the extent to which prior subsidies are passed through.
- Is it important to look at the nature of the auction, public stock offering, or other type of sale of the firm, including the number of bidders? Where there are few bidders, would it be important to consider whether the privatizing government placed restriction on who could purchase the company (*e.g.*, whether certain classes of buyers were precluded from participating)?
- Is it important that the privatization be carried out in an open, transparent manner? What elements might be important to this consideration?
- What role should independent valuations of the firm (*e.g.*, valuations by independent auditors) play? What if the winning bid for the firm being privatized was less than the value established in independent assessments?
- Given that equity markets may be more advanced in some countries than in others, should the Department account for the effect of the state of market development on the competitive bid process?
- Does the method of payment matter? For example, if the seller accepts debt or vouchers as payment for the privatized firm, should that be viewed differently than accepting cash?

Beyond these circumstances relating to the mechanics of the privatization transaction are events leading up to the privatization. These might include actions taken by the government to make the firm more attractive to potential purchasers. For example, the government might forgive debt owed to it by the firm in order to ''clean up the balance sheet.'' Or, the government may undertake the expense of closing certain inefficient operations and sell off only the more modern plants.

- Are these types of actions taken in anticipation of privatization relevant to a determination of whether subsidies pass through to the privatized firm?
- Should such actions be separated from what would otherwise be considered ''prior'' subsidies in determining the extent to which subsidies pass through or are extinguished?

Similarly, the government may impose post-privatization restrictions on the privatized firm. For example, the new owners may be required to produce particular goods or services, to operate in particular locations, to purchase particular supplies from particular suppliers, to retain a certain number of workers or to undertake a certain level of investment in the privatized firm. Or, government restrictions on the privatized firm may take the form of a ''golden share'' whereby the government retains the right to make decisions about the certain specified operations of the firm, although ownership and control has otherwise passed to the new owners.

- Should these types of conditions on the sale be considered in determining whether, and the extent to which, prior subsidies pass through?

It has also been argued that certain government-owned companies benefit from government preferences, be it through low, government-guaranteed input prices or preferential access to government-controlled credit.

- Should the Department be concerned with whether the privatized firm will continue to benefit from such preferences? Or, would it be necessary for the government to eliminate the preferences before privatization?

Finally, the issue has been raised that in the privatization scenarios typically encountered by the Department, excess global capacity exists because one or more foreign governments have created or maintained productive assets that would not exist in the absence of government subsidization. Because of this, some would argue, even if the buyer of a firm pays a market price, the prior subsidies to the privatized company result in an unfairly low price being received for the firm.

- In a situation where subsidies have led to the creation of excess capacity (thereby lowering the market price for

the firm being privatized), are those facts relevant to determining whether and to what extent the prior subsidies pass through to the privatized firm?

- How would the Department determine that excess global capacity has been created? How would excess capacity be defined and measured?
- It has also been argued that if excess capacity created by subsidies is relevant to the issue of privatization, then reductions to capacity made possible by subsidies should also be relevant. What relevance should the nature of the subsidy (*i.e.*, whether it contributes to or reduces capacity) have in determining whether and to what extent prior subsidies pass through to the privatized firm?

Conclusion

These lines of inquiry are consistent with section 771(5)(F) and with the recognition in the SAA, at 928, that the privatization issue ''can be extremely complex and multifaceted.''

In addition, it is consistent with the emphasis in both the SAA and the Senate Report on the importance of considering the facts of individual cases. We wish to emphasize that our list is not meant to be all-inclusive and we invite commenters to offer their views on other factors they consider to be relevant. Also, commenters should explain how these factors would be incorporated into a framework for analyzing privatizations and calculating subsidies to privatized firms.

We further invite comment on whether we should attempt to promulgate a final rule on the topic of privatization and what that rule might look like. Regarding the latter question, commenters are invited to address whether precise formulae should be used to determine the extent to which, if any, prior subsidies pass through or whether a case-by-case approach integrating some or all of the considerations identified in this preamble should be adopted. Commenters may want to address whether a formulaic approach could be developed that would be sufficiently comprehensive to account for special circumstances, or whether a formulaic approach would be undesirably rigid. Commenters may also want to address the consequences of the uncertainty resulting from a case-by-case approach.

In conclusion, we would like to repeat that the Department is carefully considering whether to issue a final regulation on the subject of privatization. To that end, the foregoing discussion is intended to stimulate, rather than foreclose, further thinking on this topic. We appreciate the comments that have been submitted on this topic thus far, and the fact that we may not have identified a particular suggestion should not be construed as an indication that we have rejected the suggestion.

Section 351.502

Section 351.502 deals with the ''specificity'' of domestic subsidies. Unlike its predecessor, § 355.43 of the 1989 Proposed Regulations, § 351.502 does not contain a ''general'' specificity test. This is due to the fact that section 771(5A) of the Act and the SAA provide much more detail and clarity regarding the application of the ''specificity test'' than did the prior statute and its legislative history. Thus, on the subject of specificity, there are far fewer interpretative gaps for the Department to fill in than there were in 1989, and, thus, less need for regulations. Accordingly, § 351.502 deals with certain aspects of the specificity test that are not addressed expressly in the statute or the SAA.

Paragraph (a) is based on § 355.43(b)(8) of the 1989 Proposed Regulations, and continues to provide that the Secretary will not consider a subsidy as being specific merely because it is limited to the agricultural sector. Instead, as under prior practice, the Secretary will find an agricultural subsidy to be countervailable only if it is specific within the agricultural sector; *e.g.*, a subsidy is limited to livestock, or livestock receives disproportionately large amounts of the subsidy. *See Lamb Meat from New Zealand*, 50 FR 37708, 37711 (1985).

One commenter suggested that the Department should abandon the special specificity rule for agricultural subsidies, citing the fact that under section 771(5B)(F) of the Act and Article 13(a) of the WTO Agreement on Agriculture, so-called ''green box'' agricultural subsidies are non-countervailable. With respect to this comment, we note that the Department's application of the specificity test to agricultural subsidies was upheld in *Roses, Inc.* v. *United States*, 774 F. Supp. 1376 (Ct. Int'l Trade 1991). In light of this judicial affirmance, and given the absence of any indication that Congress intended to change the Department's practice or overturn *Roses*, we are retaining the special specificity rule for agricultural subsidies.

Paragraph (b) is based on § 355.43(b)(7) of the 1989 Proposed Regulations, and continues to provide that the Secretary will not consider a subsidy as being specific merely because it is limited to small or small-and medium-sized firms. Instead, as under prior practice, the Secretary will find such a subsidy to be countervailable if, either on a *de jure* or a *de facto* basis, the subsidy is limited to certain small or small-and medium-sized firms. As in the case of the special specificity rule for agricultural subsidies, there is no indication that Congress intended to alter this aspect of the Department's specificity practice.

Paragraph (c) provides that the Secretary will not regard disaster relief as a specific subsidy if the relief constitutes general assistance available to anyone in the affected area. Although paragraph (c) has no counterpart in the 1989 Proposed Regulations, the rule contained in paragraph (c) has been part of the Department's specificity practice since *Certain Steel Products from Italy*, 47 FR 39356, 39360 (1982), in which the Department stated that ''[d]isaster relief is not selective in the same manner as other regional programs since there is no predetermination of eligible areas and no part of the country, and no industry, is excluded from eligibility in principle.'' However, before declaring a subsidy to be non-specific under paragraph (c), the Department would have to be satisfied that the subsidy in question was, in fact, *bona fide* disaster relief. *See Certain Steel Products from Italy*, 58 FR 37327, 37332 (1993).

The Department received several comments regarding the issue of specificity, most of which had to do with the specificity of domestic subsidies. For ease of discussion, we have divided these comments up by sub-issue.

Purpose of the specificity test

Some commenters requested that the Department restate in the regulations the policy rationale behind the specificity test. According to these commenters, the underlying purpose of the specificity test is to identify those domestic subsidies that confer a competitive advantage and thereby distort international trade. Other commenters pointed out that the new statute expressly states that the Department is not required to examine the effects of a subsidy or establish that the subsidy has any effect at all. These commenters, citing the reference to the *Carlisle* decision in the SAA, maintain that the sole purpose of the specificity test is to ''winnow out those foreign subsidies which are truly broadly available and widely used throughout the economy.'' SAA at 259–260, citing *Carlisle Tire & Rubber Co.* versus *United States*, 564 F. Supp. 834 (Ct. Int'l Trade 1983).

In our view, the language from the SAA cited above makes the purpose of

the specificity test abundantly clear. Given the clarity of the SAA on this point, the authoritative nature of the SAA (*see* section 102(d) of the URAA), and our general reluctance to issue regulations that merely repeat the statute or the SAA, we do not consider it appropriate to issue a regulation that restates the purpose of the specificity test.

Use of Presumptions

Two commenters suggested that in applying the specificity test, the Department should employ certain presumptions. One commenter maintained that the Department should presume that domestic subsidy programs are specific, and that the burden should be on respondent interested parties to prove otherwise. The second commenter stated that, for each domestic subsidy program under investigation, the Department should request information concerning applications and approvals made since the inception of the program. In the absence of such information, according to this commenter, the Department should presume that the foreign government in question exercises discretion in the administration of the program, and that the program is specific. Similarly, when the Department is analyzing newly instituted programs with few users, it should employ a rebuttable presumption that the program is specific. Both commenters made the point that information regarding the distribution of program benefits normally is not available to a petitioner prior to the filing of a petition.

Other commenters argued that there is no legal basis for making such presumptions. With respect to *de facto* specificity, for example, the SAA states that the Department is obligated to ''seek and consider'' information relevant to each of the four factors listed in section 771(5A)(D)(iii) of the Act. SAA at 261. One of these commenters also asserted that a petitioner alleging that a subsidy is specific should be required to provide a reasonable amount of information supporting the allegation.

As was true under the old law, a petitioner that includes a domestic subsidy in a petition must provide reasonably available information supporting the specificity allegation. *See* section 702(c) of the Act. On the other hand, the Department recognizes that because detailed information regarding the distribution of program benefits usually is either not published or is not widely available, it often is not reasonably available to a petitioner at the time a petition is filed. Therefore, in deciding whether to include alleged domestic subsidies in its investigation, the Department carefully considers the information the petitioner has put forward, the reasons why more information may not be available, and any arguments the petitioner makes regarding the specificity of the program. Because the types of allegations and information available will vary from case-to-case, it is not possible to state a general rule for accepting or rejecting specificity allegations. However, we believe that the threshold we have used in the past for including alleged subsidies in CVD investigations has been sufficient to ensure that all potentially countervailable subsidies are investigated. We intend to continue employing this initiation threshold.

Where domestic subsidy programs are included in an investigation, the Department will not presume the program is specific. Instead, the Department will seek in its questionnaire all of the information necessary to apply the specificity test according to section 771(5A)(D) of the Act. Based on its analysis of the information provided in the questionnaire responses, verification, and other information that may be collected, the Department will make the necessary specificity determination. If a respondent refuses to provide the information requested by the Department to conduct its specificity analysis, the Department may draw adverse inferences in the application of the ''facts available.'' *See* section 776(b) of the Act. However, the use of an adverse inference in these situations is not the same thing as relying on a rebuttable presumption.

Sequential Analysis

Some commenters argued that the Department should codify the ''sequential approach'' to specificity. Under the sequential approach, as reflected in the 1989 Proposed Regulations, if a subsidy was *de jure* specific or met any one of the enumerated *de facto* specificity factors, further analysis was unnecessary and was not undertaken. In support of their position, these commenters emphasized the language contained in both section 771(5A)(D)(iii) of the Act and the SAA that a subsidy will be considered specific ''if one or more'' of the factors exist. SAA at 261. Furthermore, these commenters noted, the SAA and the legislative history of the URAA make clear that the specificity test was intended to be generally consistent with the Department's previous practice, a practice that included the sequential approach. SAA at 259; S. Rep. No. 412, 103d Cong., 2d Sess. 93–94 (1994). Finally, these commenters cited the legislative history of the North American Free Trade Agreement (NAFTA) as endorsing the sequential approach.

In opposition to this view, other commenters maintained that the sequential approach contradicts the SAA, because the SAA states that the Department will ''seek and consider information relevant'' to all four of the *de facto* specificity factors. SAA at 261. Moreover, these commenters maintained, the language in the SCM Agreement requires that all of the *de facto* specificity factors be considered and that any specificity determination ''shall be clearly substantiated on the basis of positive evidence.'' Articles 2.1(c) and 2.4 of the SCM Agreement.

We believe that the Act and the SAA are sufficiently clear that, with the exception of the government discretion factor, the Department may find a domestic subsidy to be specific based on the presence of a single *de facto* specificity factor. Therefore, while the Department will continue its practice of collecting information regarding each of the four *de facto* specificity factors, our analysis of the issue will stop if the Secretary determines that a single factor justifies a finding of specificity. As for the SCM Agreement, none of the provisions cited precludes a finding of specificity based on the presence of a single factor.

In this regard, however, the Department does not agree that a finding of specificity automatically may be based solely on the fact that some measure of discretion may have been exercised in the administration of a subsidy program. Indeed, such an approach would be inconsistent with the purpose of the specificity test, as articulated in *Carlisle*. If a subsidy program is broadly available and widely used and there is no evidence of dominant or disproportionate use, the mere fact that government officials may have exercised discretion in administering the program is insufficient to justify a finding of specificity. SAA at 261.

Based on our experience in administering the CVD law, some measure of administrative discretion exists in the operation of almost every alleged subsidy program. At the most basic level, an administrator of a program typically must exercise judgment (*i.e.*, discretion) in evaluating the facts of an application for a subsidy to determine whether the applicant qualifies for the subsidy. If we were to find specificity based simply on the exercise of this type of discretion, the

other *de facto* factors would become practically meaningless, because virtually every subsidy program in the world could be declared specific on the basis of the discretion factor alone. This would produce the very sort of absurd results warned against in *Carlisle.*

As indicated in the SAA at 261, the discretion factor is generally more valuable as an analytical tool that enhances the analysis of the other *de facto* specificity factors and criteria. For example, in the case of a new subsidy program for which there have been few applicants and few recipients, the Department must make a judgment as to the likely future distribution of benefits under the program. The manner in which authorities have exercised their discretion in the early days of a new program would inform the Department in making this type of judgment. *See* SAA at 261.

Purposeful Government Action

Some commenters, citing such cases as *Saudi Iron and Steel Co. (Hadeed)* v. *United States,* 675 F. Supp. 1362, 1367 (Ct Int'l Trade 1987), maintained that a finding of specificity does not require a finding of targeting or some other sort of purposeful government action that limits the number of subsidy program beneficiaries. In a similar vein, they cited the statute and its legislative history for the proposition that the fact that program usage may be limited by the ''inherent characteristics'' of the thing being provided by the government should be deemed irrelevant. SAA at 262; S. Rep. No. 412, 103d Cong., 2d Sess. 94 (1994). Finally, these same commenters argued that the Department should analyze the availability and use of a subsidy in the context of the economy as a whole and not in the context of the universe of potential subsidy recipients.

Other commenters insisted that the Department must look behind the distribution of subsidy benefits and explore the reasons why the use of a subsidy may be limited. According to these commenters, ''purposeful government action'' should be critical to a finding of specificity.

In our view, the SAA and other legislative history make it very clear that the Department does not need to find ''targeting'' or ''purposeful government action'' to conclude that a domestic subsidy is specific. *See* SAA at 262 (''[E]vidence of government intent to target or otherwise limit benefits would be irrelevant in a *de facto* specificity analysis.''). Except in the special circumstances described in section 771(5A), *i.e.,* where respondents request the Department to take into account the extent of economic diversification in the jurisdiction of the granting authority or the length of time during which the program has been in operation, the Department is not required to explain why the users of a subsidy may be limited in number. Thus, for example, the fact that users may be limited due to the inherent characteristics of what is being offered would not be a basis for finding the subsidy non-specific. SAA at 262; S. Rep. No. 412, 103d Cong., 2d Sess. 94 (1994).

Characteristics of a ''Group''

Citing *PPG Industries, Inc.* v. *United States,* 978 F.2d 1232, 1240–41 (Fed. Cir. 1992) *(''PPG II''),* several commenters argued that to be consistent with judicial precedent, the Department must examine the ''actual make-up'' of a group of beneficiaries when performing a specificity analysis. According to these commenters, if a group of recipients does not share similar characteristics, but, instead, consists of companies in a variety of industries, the Department cannot conclude that the subsidy in question is limited to a ''group of industries.'' Moreover, nothing in the Act or the SAA requires the Department to ignore the characteristics of the group receiving the benefits from an alleged subsidy program.

Other commenters argue that the Department can identify a ''group'' of subsidy recipients without regard to any shared characteristics of the individual group members. According to these commenters, a proper understanding of what may constitute a specific ''group of industries'' flows directly from the *Carlisle* purpose of the specificity test; namely, that subsidy recipients should be considered a specific group unless the recipient industries are numerous and distributed very broadly throughout the economy. Moreover, these commenters maintain that the Department has on several occasions found subsidy programs specific even when the ''group'' of recipients have not shared common characteristics. *Steel Wheels from Brazil* 54 FR 15523, 15526 (1989); *Cold-Rolled Carbon steel Flat-Rolled Products from Korea,* 49 FR 47284, 47287 (1984).

We disagree with the first set of comments. In determining whether a subsidy is *de jure* or *de facto* specific, the Department is not required to evaluate the actual make-up of those firms that are eligible for, or actually receive, a subsidy.

With respect to *PPG II,* assuming *arguendo* that it is relevant under the new law, we note that the decision upheld the Department's determination of the non-specificity of a program. To put *PPG II* in its proper context, it is necessary to understand the facts presented in the underlying CVD case. In that case, there were numerous enterprises that used the FICORCA program being investigated. Therefore, when looked at in terms of the number of enterprises, the actual recipients were not limited. However, this conclusion says nothing as to whether the number of industries that received FICORCA benefits was limited. To answer this question, the Department (and the court) correctly focussed on the makeup of the users. If the numerous enterprises that received benefits had comprised a limited number of industries, then FICORCA would have been specific. However, because the users represented numerous and diverse industries, FICORCA was found not to be specific. We see no basis in *PPG II* or in the language of section 771(5A)(D) of the Act for imposing a requirement that the limited users also share similar characteristics. Moreover, we believe that such a requirement would undermine the purpose of the specificity test as articulated in the SAA.

Integral Linkage

Section 355.43(b)(6) of the 1989 Proposed Regulations provided that, for purposes of applying the specificity test, the Department would consider two or more subsidy programs as a single program if the Secretary determined that the programs were ''integrally linked.'' Section 355.43(b)(6) also set forth factors to be considered in making this determination.

Although the Department did not receive any comments, pro or con, regarding the integral linkage test, we have decided not to incorporate § 355.43(b)(6) into these regulations. Questions of integral linkage were relatively rare, and when they did arise, we did not find the factors set forth in § 355.43(b)(6) particularly helpful.

However, the fact that we are not recodifying § 355.43(b)(6) does not mean that we never would consider two or more ostensibly separate subsidy programs as constituting a single program for specificity purposes, although we anticipate that the circumstances leading to such a combination of programs will seldom arise. In situations where the subsidy programs have the same particular purpose (*e.g.,* to promote technological innovation), bestow the same type of benefits (*e.g.,* long-term loans or tax credits), and confer similar levels of benefits on similarly situated firms, treating the programs as a single

program may be appropriate. However, when an interested party believes that two or more programs should be considered in combination for purposes of the Department's specificity analysis, it will have the burden of identifying the relevant programs and providing information and documentation regarding their purposes and types and levels of benefit.

Section 351.503

Section 351.503 deals with the benefit attributable to the most basic type of subsidy, a grant. Paragraph (a), which is based on § 355.44(a) of the 1989 Proposed Regulations, provides that in the case of a grant, a benefit exists in the amount of a grant. Paragraph (b), which is based on § 355.48(b)(1) of the 1989 Proposed Regulations, sets forth the rule for determining when a firm is considered to have received a subsidy provided in the form of a grant.

Paragraph (c) deals with the allocation of the benefit to a particular time period. Although paragraph (c) is based on § 355.49 of the 1989 Proposed Regulations, it also contains certain changes in approach that merit comment.

Which Grants Are Allocated Over Time

Paragraph (c) retains the distinction between ''recurring'' and ''non-recurring'' grants. *See* § 355.49(a) of the 1989 Proposed Regulations. Paragraph (c)(1) provides that the Secretary will allocate a recurring grant to the year in which the subsidy is considered as having been received, a practice usually referred to as ''expensing.'' Paragraph (c)(2) provides that, with one exception (discussed below), the Secretary will allocate non-recurring grants over time.

Paragraph (c)(3) contains a test for distinguishing between recurring and non-recurring grants, and is based on the standard applied by the Department in the *GIA*. Under this standard, if a benefit is exceptional or requires express government approval, the Department will consider it as non-recurring. As explained in the *GIA:*

> Under the modified test, we are attempting to analyze the frequency and ''automaticity'' with which a benefit is provided. ''Exceptional'' benefits are those types of benefits which are not received on a regular and predictable basis; the recipient cannot expect to receive the benefits on an ongoing basis from review period to review period. The element of ''government approval'' relates to the issue of whether the program provides benefits automatically, essentially as an entitlement, or whether it requires a formal application and/or specific government approval prior to the provision of each yearly benefit. The approval of benefits under the latter type of program cannot be assumed and is not automatic. The receipt of a benefit after merely filling out the appropriate forms (*e.g.,* tax benefits) or, after initial qualification for yearly benefits under a program (*e.g.*, some types of price support programs), would meet the automaticity part of the test.

Id. If a grant is not non-recurring under this standard, the Department will treat it as a recurring grant.

In these proposed regulations, we have codified the standard contained in the *GIA* for distinguishing between recurring and non-recurring benefits. However, we continue to consider whether there might be a better standard for distinguishing between these two types of benefits. An important purpose of the recurring/non-recurring test is to reduce the burden on the Department and interested parties by limiting the amount of information requested on subsidies bestowed prior to the period of investigation or review. However, the Department is increasingly facing arguments regarding its application of the standard described in the *GIA*. At some point, the burden of applying the *GIA* standard may well outweigh the benefits. Therefore, we particularly invite comments on this issue. We note that the Department has considered other options in the past including: (1) Developing a list of the types of subsidies that would be allocated and those that would be expensed; (2) allocating any grant-like benefit that exceeds 0.50 percent (discussed below); and (3) allocating only those grant-like subsidies that are tied to the purchase of fixed assets. *See* Memorandum from Staff to Joseph Spetrini, Acting Assistant Secretary for Import Administrations and Barbara R. Stafford, Deputy Assistant Secretary for Investigations, dated May 17, 1993, regarding Countervailing Duty Investigations of Certain Steel Products, How to Make the Expense vs. Allocate Decision; Investigations, C–100–004, Public Document. Regarding the first option, *i.e.*, development of a list of the types of subsidies that would be allocated and those that would be expensed, the Department has given examples of the two types of subsidies in the preamble to § 355.49(a)(2) of the 1989 Proposed Regulations and in the *GIA* at 37226.

The 0.50 Percent Test and the Expensing of Small Grants

Although the Department normally will allocate non-recurring grants over time, paragraph (c)(2)(ii) retains (with some stylistic changes) the so-called 0.50 percent test. *See* § 355.49(a)(3)(i) of the 1989 Proposed Regulations; *GIA* at 37226. Under this test, the Department will expense non-recurring grants received under a particular subsidy program to the year of receipt if the total amount of such grants is less than 0.50 percent *ad valorem*, as calculated under § 351.525.

The Department considers this test to be an important part of its efforts to simplify CVD proceedings and to reduce the burdens on all parties involved. By expensing small non-recurring grants to the year of receipt, the Department avoids the need to: (1) Collect, analyze, and verify the data needed to allocate such grants over time; and (2) keep track of the allocation calculations for minuscule subsidies from year to year. If considered only in the context of a single case, the burdens imposed by this activity may not appear to be particularly onerous. However, when considered across all investigations and administrative reviews, the cumulative burden becomes considerable.

Certain commenters have argued that the 0.5 test should be applied on an aggregated basis; *i.e.*, that non-recurring subsidies should be expensed only when the total of benefits under all programs is less than 0.5 percent. In their view, this would prevent foreign governments from evading countervailing duties by awarding ''small'' benefits under numerous programs.

To address this concern, we have written § 351.503(c)(2)(ii) to say that the Secretary will ''normally'' expense non-recurring grants received under a program if the grants are less than 0.5 percent. Thus, although we intend to continue to apply the 0.5 percent rule on a program basis, we have given ourselves the flexibility to take a different approach in situations where petitioners are able to point to clear evidence that the foreign government has deliberately structured its subsidy programs so as to reduce the exposure of its exporters to countervailing duties.

The Time Period Over Which Non-Recurring Grants Are Allocated

Once the Department has determined that a grant is non-recurring, it will calculate the amount of subsidy to be assigned to a particular year according to the formula described in paragraph (c)(4). The formula is the same one that appeared in § 355.49(b)(1) of the 1989 Proposed Regulations. We note that comments were received recently on this formula. We have not addressed those comments here, but intend to do so for the final regulations.

As described below, we have made changes in the methods used to determine certain variables used in the formula. In a departure from past

practice, paragraph (c)(2) provides that the Secretary will allocate a non-recurring grant over the number of years corresponding to a firm's AUL, a term that is defined in paragraph (c)(4)(ii) as the average useful life of a firm's productive assets. Before describing how the Department will calculate a firm-specific AUL, we first should discuss why we are changing our practice.

Selection of the AUL Method

It has often been suggested that there is no single correct method for determining the number of years over which a subsidy should be allocated. For example, in paragraph 2 of its *Guidelines on Amortization and Depreciation,* BISD 32S/154 (1984–85) (''*Guidelines*''), the Tokyo Round Committee on Subsidies and Countervailing Measures stated: ''Financial and accounting theory and practice do not provide any single acceptable method of determining the appropriate time-period over which subsidies should be allocated.'' Similarly, in the *Subsidies Appendix* annexed to *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina,* 49 FR 18016, 18018 (1984), the Department stated that ''[t]here are no economic or financial rules that mandate the choice of an allocation period.''

In addition, there has been little guidance from Congress on this issue. The legislative history of the Trade Agreements Act of 1979 refers to the selection of ''a reasonable period based on the commercial and competitive benefit to the recipient as a result of the subsidy,'' S. Rep. No. 249, 96th Cong., 1st Sess. 86–87 (1979), and reliance on ''generally accepted accounting principles.'' H.R. Rep. No. 317, 96th Cong., 1st Sess. 74–75 (1979); H.R. Doc. No. 153, Pt. II, 96th Cong., 1st Sess. 433 (1979). However, this advice does not of itself supply concrete answers, particularly in light of the fact that, as suggested above, generally accepted accounting principles do not provide rules for allocating subsidies over time.

Against this conceptual and legal background, in the *Subsidies Appendix*, the Department chose the so-called ''IRS tables method'' of selecting an allocation period. Under this method, the Department allocated a subsidy over the number of years corresponding to the average useful life of a firm's renewable physical assets (equipment), as set forth in the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77–10, 1977–1, C.B. 548 (RR–38). Subsequently, the Department codified this method in § 355.49(b)(3) of the 1989 Proposed Regulations. At the time, the Department believed that the IRS tables method offered ''consistency and predictability,'' although the Department expressed a willingness to consider other approaches. *See* 54 FR at 23376–77.

The IRS tables method has not been a subject of controversy in the vast majority of CVD proceedings in which the Department has used that method. However, in those proceedings where one or more parties did challenge the IRS tables method, the Department has been unable to successfully defend that method in court. Beginning with *British Steel Corp.* v. *United States,* 632 F. Supp. 59, 68 (1986), and continuing up to *Usinor Sacilor* v. *United States,* 893 F. Supp. 1112 (1995), the CIT repeatedly has struck down the use of the IRS tables method. In addition, in *United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in France, Germany and the United Kingdom,* SCM/185, Nov. 15 1994 (Unadopted), a panel convened pursuant to the Tokyo Round Subsidies Code found fault with the IRS tables method as applied by the Department. The common theme of these adverse decisions appears to be that because the IRS tables method is not a company-specific approach, it fails to adequately reflect the benefit of a subsidy to a particular firm.

While we do not necessarily agree with the reasoning of these decisions, the inability of the IRS tables method to pass judicial muster undermines the consistency and predictability that are the most attractive features of that method. Pending a resolution of this issue by the U.S. Court of Appeals for the Federal Circuit, which could be a long time in coming, every determination by the Department relying on the IRS tables method would be vulnerable to litigation, a process that is expensive and time-consuming not only for the Department, but also for the private parties that the CVD law is intended to serve.

Accordingly, the Department has determined to abandon the IRS tables method. In identifying a replacement method, one obvious consideration is that the method must relate sufficiently to the ''commercial and competitive benefit to the recipient as a result of the subsidy,'' the phrase from the legislative history to which the courts, rightly or wrongly, have assigned great significance. It is also important that the method must be sufficiently administrable so as not to impose undue burdens on private parties and the Department.

With these criteria in mind, we have considered alternatives to the IRS tables method that have been suggested in comments submitted as part of this rulemaking, as well as in past and pending litigation. *See, e.g., Final Results of Redetermination Pursuant to Court Remand on General Issue of Allocation* in *British Steel plc.* v. *United States,* Consol. Ct. No. 93–09–00550–CVD (Ct. Int'l Trade June 30, 1995) (''*British Steel Remand*''). The principal alternatives are: (1) Company-specific average useful life of productive assets; (2) company-specific average maturity of long-term debt; (3) company-specific weighted-average use of funds; and (4) the IRS tables as a rebuttable presumption.

We have chosen the first alternative, the company-specific average useful life of productive assets, or ''AUL.'' First, we believe that the AUL method will be more administrable and predictable than the other alternatives, because, as discussed in more detail below, it should be easily calculable from a firm's accounting records. With respect to the long-term debt alternative, based on our experience, many of the firms that we investigate do not have access to long-term debt financing (except possibly as a result of government support). Therefore, as a practical matter, this alternative would frequently lead us to use non-company-specific, surrogate measures of life of debt. With respect to the use of funds alternative, this alternative appears unduly complicated, requiring both private parties and the Department to calculate multiple allocation periods, including a company-specific AUL, and then take a weighted-average of those figures. Finally, with respect to using the IRS tables as a rebuttable presumption, this alternative likely would waste the time of private parties and the Department in arguments over whether or not the allocation period called for by the IRS tables had been effectively ''rebutted'' by a firm's own AUL.

Second, the AUL method has been recognized internationally as a reasonable method of determining the appropriate time period over which subsidies should be allocated. As stated in ¶ 5.1 of the *Guidelines,* ''[w]hile the benefit of a grant (that is, elimination of financial obligations the recipient company would otherwise incur) has no exact correlation to the life of any assets purchased with the grant, allocating the grant over the average life of renewable physical assets is one generally practical, fair, and consistent method of allocation.'' Although the *Guidelines* are no longer in effect due to the termination of the Tokyo Round

Subsidies Code, we consider it significant that the United States and its major trading partners went on record as endorsing the AUL method as an acceptable method of determining an allocation period for subsidies.

Finally, we note that the Department's use of company-specific AUL was recently affirmed in *British Steel PLC* v. *United States*, 929 F. Supp. 426 (Ct. Int'l Trade 1996).

Calculation of a Company-Specific AUL

Paragraph (c)(4)(ii) describes the manner in which the Department will calculate a company-specific AUL. Normally, firms will not calculate their ''actual'' AUL in the normal course of business, and requiring firms to calculate this figure for purposes of a CVD proceeding could pose an extremely onerous burden on firms with thousands of individual assets. Therefore, what is needed is a calculation method that results in reasonable reporting requirements, while at the same time produces a reasonable estimate of a firm's actual AUL.

We believe that paragraph (c)(4)(ii) achieves these dual objectives. Under paragraph (c)(4)(ii), a firm's AUL will be calculated by dividing the firm's depreciable productive assets by the firm's average annual charge to accumulated depreciation. As indicated in the second sentence of paragraph (c)(4)(ii), this calculation will be based on data covering a period considered appropriate by the Secretary. Because this is a new method with which the Department has little experience, we are reluctant to provide more detail at this time in the form of a regulation. Instead, we intend to include detailed instructions in our CVD questionnaires concerning the calculation of an AUL. Once we have gained more experience with this method, we may add additional detail to the regulation.

We should note, however, that we currently intend to include in our initial CVD questionnaires a request that a firm calculate its average AUL over a period of ten years, a period that would include the period of investigation and the nine preceding years. Based on the results of this calculation, the firm then would provide information on its non-recurring subsidies for a time period corresponding to the average AUL it calculated. For example, if a firm calculated that its average AUL for the ten-year period described above was 15 years, the firm would provide data on its subsidies for the period of investigation and the 14 preceding years. If the investigation results in a CVD order, the AUL will be recalculated for non-recurring subsidies received after the period on investigation (''POI'') based on updated information. For example, if a non-recurring grant is received in the third year after the original POI, the allocation period for that subsidy would be the average AUL for the year that subsidy is received and the nine previous years.

As in the case of any other piece of data included in a response to a CVD questionnaire, a firm's calculation of its AUL would be subject to verification by the Department and comment by parties to the proceeding.

As set forth in the third sentence of paragraph (c)(4)(ii), the Secretary will attempt to exclude fixed assets that are not depreciable (such as land or construction in progress) and assets that have been fully depreciated and that are no longer in service. However, assets that are in service would be included even if they have been fully depreciated.

In addition, it may be necessary to make normalizing adjustments for factors that may distort the calculation of an AUL. Again, we are not in a position at this time to provide additional detail in the regulation itself, because the types of adjustments necessary likely will vary based on the facts of a particular case. However, certain obvious normalizing adjustments that come to mind are situations in which a firm may have charged an extraordinary write-down of fixed assets to depreciation due, or where the economy of the country in question can be characterized as hyperinflationary.

Finally, there may be situations in which an AUL cannot be calculated in the manner described above (assets divided by depreciation). For example, if a firm's depreciation is not based on an estimate of the actual useful life of its assets, the calculation described above would not be a reasonable method of calculating AUL. Similarly, AUL could not be calculated in this manner if the firm does not use straightline depreciation and additions to the firm's asset pool are irregular and uneven. Indeed, there may be cases where there is no reasonable method of calculating a *company-specific* AUL. In such cases, the Department will consider, among other things, any alternative calculation methods for AUL offered by parties to the proceeding, including the IRS table method previously used by the Department. Such alternative methods will not be limited to those that are company-specific.

In addition, we should note that because petitioners may not be in a position to calculate a potential respondent's AUL at the time a petition is filed, petitioners may not know how many years back they can go in alleging countervailable subsidies. To provide more certainty to petitioners, the Department will accept the period specified in the IRS tables for purposes of making subsidy allegations in a petition.

Calculation of the Benefit Stream

Paragraph (c)(4)(iii) deals with the selection of a discount rate. Consistent with the *GIA* at 37227, paragraph (c)(4)(iii)(B) provides that, in the case of an uncreditworthy firm, the Secretary will use as a discount rate an interest rate with a ''risk premium'' included.

Section 351.504

Section 351.504 deals with loans and other forms of debt financing. Paragraph (a) deals with the identification and measurement of the benefit attributable to a loan. Paragraph (a)(1) tracks the general standard set forth in section 771(5)(E)(ii) of the Act, which directs the Department to use a ''comparable commercial loan that the recipient could actually obtain on the market'' as the benchmark for determining whether a government-provided loan confers a benefit. Additionally, paragraph (a)(1) restates the Department's current practice, as reflected in § 355.44(b)(8) of the 1989 Proposed Regulations, that in making this comparison the Secretary normally will seek to compare effective interest rates rather than nominal rates. ''Effective interest rates'' are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges (such as stamp taxes) or penalties paid in addition to the ''nominal'' interest. However, the Department intends that, if effective rates are not available, the Secretary will compare nominal rates or, as a last resort, nominal to effective rates, as under current practice. If the ''loan'' is a bond (*see* definition of ''loan'' in § 351.102), the Department normally will treat the yield on the bond as the effective interest rate.

Paragraphs (a)(2) and (a)(3) elaborate on the criteria for selecting the benchmark. As the reader quickly will ascertain, the criteria contained in paragraphs (a)(2) and (a)(3) are much more general (and, thus, much more flexible) than the detailed hierarchies contained in § 355.44(b) of the 1989 Proposed Regulations. The Department seldom used these hierarchies, because, in practice, the required information was seldom available.

Paragraph (a)(2) sets out the criteria the Department will normally consider

in selecting a comparable commercial loan. We received the following comments relating to this issue: (1) If the Department modifies its current benchmark hierarchies, any new hierarchies or benchmark selection criteria should take account of the maturity and corresponding level of risk associated with the government-provided loan being analyzed; (2) requiring *identical* financing is impractical and undermines the Department's discretion; (3) in the case of foreign currency loans, which typically are long-term in nature, the Department's selection of a comparable loan should be based explicitly on the comparable currency, and should only be based on the domestic currency in certain unique situations; and (4) the Department should make clear its policy of selecting as its benchmark a loan that was taken out (or could have been taken out) at the same point in time as the government-provided loan.

With respect to these comments, we agree that a comparable commercial loan used as a benchmark should represent a financial instrument that is similar to the government-provided loan and that was taken out (or could have been taken out) at the same point in time. We believe that this type of approach will ensure a reasonable comparison, because the comparable loan will exhibit the same basic characteristics of maturity, risk, and currency denomination that are embodied in the allegedly subsidized financing. In addition, we agree with the commenter that recommended that the Department specify the time period from which it will select comparable financing. See paragraphs (a)(2)(iii) and (a)(2)(iv). With respect to those comments suggesting refinements to the benchmark hierarchies contained in the 1989 Proposed Regulations, as explained above, we have discarded those hierarchies in favor of a more flexible approach. However, we believe that our new approach is consistent with the objectives underlying the comments.

Several commenters suggested that loans under a government program, even if the program is not specific, should not be considered ''commercial'' loans. We agree with these commenters, and have incorporated their suggestion into paragraph (a)(2)(ii). We note, however, that we do not equate a ''loan provided under a government program'' with a ''loan from a government-owned bank.'' Consistent with § 355.44(b)(9) of the 1989 Proposed Regulations, which is discussed further below in connection with paragraph(a)(6)(ii), the Secretary normally will consider loans from government-owned banks as commercial loans.

The commenters disagreed over the selection of a comparable commercial loan in the case of a suspension agreement, some commenters arguing that special rules should be used in the case of a suspension agreement, because: (1) a suspension agreement is forward-looking, and (2) the use of a retrospective benchmark undermines the utility of a suspension agreement.

We agree that a suspension agreement is forward-looking, but we do not believe that this fact requires special rules governing the selection of comparable commercial loans. Typically, in its administration of a suspended investigation, the Department will monitor developments in commercial benchmarks outside of the normal administrative review process. This monitoring activity ensures that the commercial benchmarks used are timely. *See Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia,* 61 FR 9429 (March 8, 1996).

Paragraph (a)(3) addresses the requirement that the comparable loan be one that the firm ''could actually obtain on the market,'' and reflects a change in practice for short-term loans. As described in § 355.44(b)(3) of the 1989 Proposed Regulations, the Department has used national average interest rates to determine the benefit from government-provided short-term loans. However, at the time the 1989 Proposed Regulations were promulgated, the Department announced that it would consider using company-specific benchmarks for short-term loans. Based upon our experience in the interim, and especially because of the ability to computerize our loan calculations, we have concluded that we have the capability to use company-specific benchmarks. Moreover, we believe that company-specific benchmarks provide a more accurate measure of the benefit, if any, to a recipient of a government-provided short-term loan. Therefore, paragraph (a)(3)(i) states a preference for using company-specific benchmarks for both short-and long-term loans. Under paragraph (a)(3)(ii), we normally would use national averages only in the event that the firm did not take out any comparable commercial loans during the relevant period.

One commenter argued that a benchmark hierarchy for short-term loans should emphasize company-specific rates and should rely on country-wide rates only as a last resort. In response to these comments, another commenter argued that mandating the use of company-specific rates has no basis in the statute and may be inappropriate in cases involving a large number of companies.

We disagree that there is no basis in the statute for using company-specific benchmarks for short-term loans. To the contrary, we see the use of company-specific benchmarks as being more consistent with the requirement that the benefit be determined by looking at a loan (or loans) the firm actually could obtain. In large cases, *e.g.,* cases with numerous respondents, it may become necessary to use a national average rate. If so, paragraph (a)(3)(i) provides sufficient flexibility to do so.

Paragraph (a)(3)(iii) deals with the long-term loans to firms considered to be uncreditworthy. In a change from the practice described in § 355.44(b)(6)(iv) of the 1989 Proposed Regulations, paragraph (a)(3)(iii) describes a new method for calculating the benchmark the Department will use in identifying and measuring the benefit attributable to a government-provided long-term loan received by an uncreditworthy firm.

The new method is based explicitly on the notion that when a lender makes a loan to a company that is considered to be uncreditworthy (as opposed to a safer, creditworthy company) the lender faces a higher probability that the borrower will default on repayment of the loan. As a consequence of this higher probability of default, the lender will charge a higher interest rate. The calculation described in paragraph (a)(3)(iii) captures the increased probability of default by adjusting upward the rate of interest a creditworthy company would pay in the country in question.

In making this adjustment, the Department is not proposing to calculate the probability that a particular uncreditworthy firm will default on a particular loan. Such a calculation would require extensive data and analysis, and any conclusion would be highly speculative. Instead, similar to the method the Department has used since 1984, we are proposing to rely on information regarding the U.S. debt market. In particular, we have used the weighted average one-year default rate for speculative grade bonds between 1970 and 1994, as reported by Moody's Investor Service. This average default rate is 4.3 percent. This rate is reflected indirectly in the formula, which is based on the probability that these risky loans will be repaid (*i.e.,* 1—.043 = .957).

Although the uncreditworthy benchmark we adopted in 1984 and included in the 1989 Proposed Regulations has not been controversial, we believe that the method we are

proposing here offers a more accurate measure of risk involved in lending to firms with little or no access to commercial bank loans. By adjusting the interest rate that a healthy, low-risk company would pay in the country in question upward to account for the greater likelihood of default by an uncreditworthy borrower, we capture more precisely the speculative nature of loans to uncreditworthy companies and the premium they would have to pay the lender to assume that risk.

Paragraph (a)(4) sets forth the standard for determining when a firm is uncreditworthy. Paragraph (a)(4)(i) is based on § 355.44(b)(6)(i) of the 1989 Proposed Regulations, but has been modified to clarify the analysis the Department intends to undertake in determining whether a company is creditworthy. In § 355.44(b)(6)(i) of the 1989 Proposed Regulations we stated that the Secretary would deem a firm uncreditworthy if that ''firm did not have sufficient revenues or resources to meet its costs and fixed financial obligations in the three years prior to the year in which the firm and the government agreed upon the terms of the loan.'' We have replaced this statement with an explanation of what we mean by ''uncreditworthiness.'' Specifically, we will find a company to be uncreditworthy if information available at the time the government-provided loan is made indicates that the firm could not have obtained long-term financing from conventional commercial sources. In this context, ''conventional commercial sources'' is meant to refer to bank loans and non-speculative grade bond issues. Hence, uncreditworthy companies are those that would be forced to resort to other sources, such as junk bonds, to raise funds. The Department will make its creditworthiness finding based on the information described in paragraphs (a)(5)(ii) (A), (B), (C), and (D), which are unchanged from the comparable paragraphs in § 355.44(b)(6) of the 1989 Proposed Regulations.

Paragraph (a)(4)(ii) is based on the last sentence of § 355.44(b)(6)(i) of the 1989 Proposed Regulations. However, the word ''normally'' has been replaced by the phrase ''In the case of firms not owned by the government * * *.'' Also, the term ''government-provided guarantee'' replaces ''explicit government guarantee.'' With respect to the first change, the deletion of ''normal ly'' reflects the Department's consistent practice considering commercial financing to a firm to be dispositive evidence of a firm's creditworthiness only if the firm is privately-owned. With respect to the second change, this is intended to indicate that the Department will consider the circumstances surrounding the financing as a whole, instead of relying on one factor in determining whether the financing shows that the firm is creditworthy.

Paragraphs (a)(4)(iii) and (a)(6)(i) are based on §§ 355.44(b)(6) (ii) and (iii) of the 1989 Proposed Regulations. Paragraph (a)(4)(iii) states that the Secretary will ignore current and prior countervailable subsidies in determining whether a firm is uncreditworthy. In other words, the Secretary will not attempt to adjust a firm's financial data for current and prior subsidies in making a creditworthiness determination. Paragraph (a)(6)(i) continues to require a specific allegation before the Secretary will consider the uncreditworthiness of a firm.

Paragraph (a)(5) deals with long-term variable rate loans, and codifies a methodology set forth in the *GIA*. Under paragraph (a)(5)(i), the year in which the terms of the government-provided loan are set establishes the reference point for comparing the government-provided variable-rate loan with the comparable commercial variable-rate loan. If the interest rate on the government-provided loan is lower than the interest rate on the comparable commercial loan, a benefit exists. If the interest rate on the government-provided loan is the same or higher, no benefit exists. The rationale for basing the decision on the first-year interest rate differential is that the interest rate spread, if any, in that year generally will apply throughout the life of the loan. Paragraph (a)(5)(ii) recognizes that there may be situations where the method described in paragraph (a)(5)(i) is not appropriate and provides the Department with the discretion to modify that method. For example, there may be no comparable commercial variable-rate loan to use for comparison purposes or the repayment structure of the government-provided variable-rate loan may be such that the simple interest rate comparison described in paragraph (a)(5)(i) would not yield an accurate measure of the benefit.

Paragraph (a)(6)(ii) establishes an evidentiary standard for investigations of loans extended by government-owned banks, and is based on § 355.44(b)(9) of the 1989 Proposed Regulations. *See also* paragraph (a)(2)(ii), discussed above. In this regard, some commenters argued that the Department should investigate all loans from government-owned, or government-supported, banks, and that the Department should abandon its requirement that evidence be presented that such loans were provided under a specific government program. According to the commenters, because this type of information is not reasonably available to petitioners, the burden of proving that a company has not received subsidized loans from a government-owned bank should be shifted to respondent interested parties. In addition, these commenters argued that the Department should consider financing provided by a bank that is partially funded by the government to be countervailable even in the absence of a particular government program.

In response, one commenter argued that the Department should continue to require reasonable evidence that loans from government-owned banks are provided at government direction or from government funds and on subsidized terms. According to this commenter, the adoption of a looser approach would create a *per se* rule that the lending practices of government-owned banks are in and of themselves suspect. Additionally, shifting the burden of proof to respondents to show that such loans are not countervailable would be a violation of the ''positive evidence'' approach outlined in Article 2.4 of the SCM Agreement and the ''substantial evidence'' requirement of section 516A(b)(1)(B) of the Act.

Under our past practice, we have distinguished between government-owned banks that are operated to meet special financing needs and commercial banks that are government-owned. For the former (*i.e.*, special purpose banks such as national development banks), petitioners are asked to provide information reasonably available to them to show that loans being provided by such banks are specific and that the interest being charged is not at commercial rates. For the latter (*i.e.*, commercial banks that are government-owned), we have additionally requested that petitioners provide reasonably available information that the loans in question are something more than mere commercial loans. In particular, we request information suggesting that such loans are being provided at the direction of the government or with funds provided by the government.

We believe this approach is appropriate because we have no basis to presume that loans given under the commercial operations of government-owned banks confer a subsidy. Moreover, we do not believe that our request for this additional information places an unreasonable burden on petitioners; they need only provide reasonably available information that the government-owned bank, for example, administers government loan

programs that could be the source of the loan in question.

Thus, with the exception of special purpose banks (as discussed above), we agree with the commenters who argued that the Department should investigate loans from a government-owned bank only when a petitioner provides information suggesting that such loans are being provided at the direction of the government or with funds provided by the government. Accordingly, paragraph (a)(6)(ii) reaffirms the Department's prior approach with respect to government-owned banks.

Paragraph (b) sets forth a rule regarding the point in time at which the benefit from a loan arises, and is based on § 355.48(b)(3) of the 1989 Proposed Regulations. The second sentence of paragraph (b) addresses loans with special characteristics, such as loans with preferential grace periods. In the case of these types of loans, we do not believe that it is appropriate to wait until the end of the grace period to begin assigning subsidy amounts, because the longer the grace period, the greater the subsidy benefit and the greater the time before countervailing duties can be assessed.

Paragraph (c) deals with the allocation of the benefits of a government-provided loan to a particular time period. While paragraph (c) is based, in part, on § 355.49 of the 1989 Proposed Regulations, it contains several changes.

Paragraph (c)(1) provides that the benefit of a short-term loan will be allocated (expensed) to the year(s) in which the firm is due to make interest payments on the loan. This approach, which essentially treats short-term loans as recurring subsidies, is consistent with longstanding Department practice.

Paragraph (c)(2) deals with situations in which the benefit of a government-provided loan stems solely from the concessionary interest rate of the loan, not from any differences in repayment terms. Where this is the case, there is no need to engage in the complicated calculations called for by § 355.49(c) of the 1989 Proposed Regulations. Instead, as paragraph (c)(2) provides, the annual benefit can be determined by simply calculating, for each year in which the loan is outstanding, the difference in interest payments between the government-provided loan and the comparison loan. The last sentence of paragraph (c)(2) restates the principle reflected in § 355.49(c)(2) of the 1989 Proposed Regulations that the amount of the subsidy conferred by a government-provided loan never can exceed the amount that would have been calculated if the loan had been given as a grant.

Paragraph (c)(3) deals with situations where both the government-provided loan and the comparison loan are long-term, fixed-interest loans, but where the two loans have dissimilar grace periods or maturities, or where the repayment schedules have different shapes (*e.g.*, declining balance versus annuity style). Because a firm may derive a benefit from special repayment terms, in addition to any benefit derived from a concessional interest rate, for these loans we will continue to calculate what was described as the ''grant equivalent'' in § 355.49(c) of the 1989 Proposed Regulations. However, instead of adopting the loan allocation formula from the 1989 Proposed Regulations, we intend to use the grant allocation formula described in § 351.503(c) (except that the allocation period will be the life of the government-provided loan). The elimination of the old loan formula reflects our desire to streamline methodologies, where possible. Moreover, by timing the receipt of the benefit from these types of loans to the year in which the government-provided loan was received (*see* § 351.504(b)), the old loan formula becomes unnecessary, because its primary purpose was to begin assigning annual subsidy amounts in the year after the receipt of the loan.

Paragraph (c)(4) sets forth the method of calculating an annual benefit for government-provided variable-rate loans, and is little changed from § 355.49(d) of the 1989 Proposed Regulations.

Several commenters suggested that instead of using the life of the loan as the allocation period for long-term loans, the Department should use the same allocation period as used for other types of non-recurring subsidies. Given that, as discussed above, the Department has adopted the AUL method for non-recurring grants, if the Department were to adopt this suggestion it would mean allocating the benefit of a long-term loan over the average useful life of a firm's renewable assets.

For the following reasons, we have not adopted this suggestion. First, as part of our streamlining effort, we are not, as a general matter, calculating grant equivalents. Therefore, our new methodology does not lend itself to allocating loan subsidies over any period other than the life of the loan. Moreover, while ¶ 4.2 of the *Guidelines* recognizes that the allocation of the benefit of a long-term loan over the life of assets is a reasonable method, ¶ 4.1 recognizes that allocation over the life of the loan is also a reasonable method. In addition, the life-of-the-loan method imposes less of a burden on private parties and Department staff than other alternatives, because it is a comparatively easy matter to determine the life of a loan. The Department's longstanding practice of allocating a long-term loan benefit over the life of the loan has been relatively non-controversial and litigation-free, and we are reluctant to change this practice absent a persuasive demonstration that an alternative method is superior to existing practice. In this instance, we do not believe that such a demonstration has been made.

Paragraph (d) sets forth a method for calculating the annual benefit attributable to a long-term interest-free loan, the obligation for repayment of which is contingent upon subsequent events, such as the achievement of a particular profit level by the firm. Paragraph (d) is based on § 355.49(f) of the 1989 Proposed Regulations, and continues to provide that the Secretary will treat any outstanding balance on one of these types of loans as an interest-free, short-term loan (using a short-term loan benchmark), and will expense any benefit(s) to the year(s) in which interest would have been paid on the short-term loan.

Section 351.505

Section 351.505 deals with loan guarantees. Paragraph (a)(1) sets forth the general rule for identifying and measuring the benefit attributable to a government-provided loan guarantee, and conforms to the new standard contained in section 771(5)(E)(iii) of the Act.

One commenter argued that in choosing a comparable commercial loan by which to identify and measure the benefit attributable to a government-provided loan guarantee, the Department should use a loan with a comparable commercial guarantee. This same commenter also recommended that the Department continue the approach described in § 355.44(c)(2) of the 1989 Proposed Regulations. Under this practice, if the government was the owner of the firm and it was normal commercial practice in the country for owners or shareholders to provide loan guarantees comparable to the government-provided guarantee, the Department did not consider the government-provided guarantee as giving rise to a benefit. In response, one commenter argued that the Department's practice in this regard is inconsistent with the government's involvement in the transaction in that, unless a subsidy was being provided, the firm would have obtained the loan through a commercial guarantor.

We agree that in determining whether a government-provided loan guarantee

confers a benefit, the Department should determine whether it is a normal commercial practice in the country in question for a private owner, or parent company, to guarantee a loan. We have drafted paragraph (a)(2) accordingly. A government-provided guarantee should not be considered countervailable if it is given by the government in its capacity as owner (*i.e.*, not under a government guarantee program used by government-owned and privately-owned companies) and if private owners normally provide guarantees in the same circumstances. For example, if the government directly guaranteed the debt of a company it owned, it would fall upon the respondent to demonstrate that private shareholders in that country also would normally guarantee the debt of the companies in which they own shares. Where a government-owned holding company guarantees the debt of its subsidiaries, the respondent would need to show that it is normal commercial practice for non-government-owned corporations to guarantee the debt of their subsidiaries. In addition, the respondent would need to demonstrate sufficient internally-generated resources to serve as guarantor of the debt. Where the government or a government-owned holding company guaranteed the debt of an ''uncreditworthy'' company it owned (*see* § 351.504(a)(4) regarding uncreditworthy companies), the respondent would need to provide evidence that private owners would also guarantee the debt of uncreditworthy companies they own.

The Department normally will not consider whether the behavior of a government owner/guarantor represents normal commercial practice unless a respondent provides adequate supporting information. Such information can include statements by independent sources such as financial or banking experts, tax experts or academics in the field of business. Absent such a demonstration, the Department will identify and measure the benefit from a government-provided loan guarantee by comparing the guaranteed loan to a comparable commercial loan in the same manner as under § 351.504. In addition, to conform to new section 771(5)(E)(iii) of the Act, paragraph (a)(1) provides that the Department will adjust for any difference in the guarantee fees. Therefore, we do not agree with the first comment that we should decide which loans are comparable on the basis of the comparability of the loan guarantees.

Paragraphs (b) and (c) deal, respectively, with the time at which the benefit from a loan guarantee is considered to have been received and the allocation of the benefit to a particular time period. Both paragraphs essentially apply the methodology for loans set forth in paragraphs (b) and (c) of § 351.504.

Section 351.506

Section 351.506 deals with equity infusions. Paragraph (a) deals with the identification and measurement of the benefit attributable to a government-provided equity infusion. Like § 355.44(e) of the 1989 Proposed Regulations, paragraph (a) is divided into two methodological tracks, the choice of methodology depending on whether or not there are actual private investor prices to serve as a benchmark for shares of a firm purchased by a government. However, paragraph (a)(1) retains the existing preference for private investor prices as a benchmark.

Actual Private Investor Prices Available

Paragraph (a)(2) contains rules for analyzing equity infusions when actual private investor prices are available, the first methodological track, and is largely based on § 355.44(e)(1) of the 1989 Proposed Regulations. Under § 355.44(e)(1), the first question in analyzing an equity infusion was whether, at the time of the infusion, there was a market price for newly-issued equity. If so, and if the shares purchased on the market were in the same form as the shares purchased by the government, the Department determined the amount of the benefit by comparing the price paid by government for its shares with the market price. In an exceptional situation, however, the Department could find the volume of a firm's traded shares to be so low as to preclude the use of those shares as a benchmark.

Paragraph (a)(2) is not intended to alter any of these basic principles. It does, however, elaborate on them in two respects. First, it addresses the use of prices of shares that are not in the same form as the shares provided to the government as benchmarks. Second, it permits the Department to use as a benchmark the market price of publicly-traded shares that the firm had previously issued.

The Department considered these last two issues in the 1993 steel determinations. With regard to the use of shares that are not identical to the shares being purchased by the government, the Department determined that in appropriate circumstances, shares with similar characteristics can be compared. *See GIA* at 37252. The CIT subsequently upheld the principle of relying on a similar form of equity where the same form of equity does not exist. *Geneva Steel* v. *United States*, 914 F. Supp. at 580 (1996).

With respect to secondary market shares, in the *GIA* at 37250, the Department explained that its practice was to ''resort to the use of secondary market share prices in instances where private investors did not purchase new shares from the firm at the same time they were issued to the government.'' The Department reaffirmed this practice, holding that, ''(a)s long as the market price benchmark at the time of the infusion has not been shown to be deficient or tainted * * * a government equity infusion must be determined to be made on an equityworthy basis whenever the government purchases shares at (the secondary market) price.'' *Id.* at 37251. This practice, too, has been sustained by the courts. *Geneva Steel* v. *United States*, 914 F. Supp. at 581 (1996).

The URAA did not modify these general principles. Section 771(5)(E)(i) states that a benefit shall normally be treated as conferred if, in the case of an equity infusion, ''the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made.'' Market-determined share prices, when available and useable, provide the best gauge as to the usual investment practice of private investors, including practices regarding the provision of risk capital.

Therefore, under paragraph (a)(2)(i)(A), an equity infusion confers a benefit if the price paid by the government for newly-issued equity is more than the price paid by private investors for newly-issued equity of the same (or similar) form. For example, if a government pays $10 per share for newly-issued shares in a firm, and private investors pay $5 per share for the same shares, a benefit exists in the amount of $5 per share ($10 − $5 = $5).

If there is no private investor price for newly-issued equity, under paragraph (a)(2)(i)(B), an equity infusion confers a benefit if the price paid by the government for newly-issued equity is less than the market-determined price, at such time as permits a reasonable comparison, of previously issued publicly-traded shares of the same (or similar) form. We continue to believe that market prices should be preferred as benchmarks, because such prices incorporate private investors' perceptions of a firm's future earning potential and worth.

In this regard, however, we intend that in applying this private investor standard, the amount of shares

purchased by private investors must be sufficiently significant so as to provide an appropriate benchmark. *See* paragraph (a)(2)(iii). For an example of a situation where the Department found sufficient private participation to warrant use of the prices paid by private investors as the benchmark, *see Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy,* 60 FR 31922, 31994 (1995). Also, the use of a ''similar'' share as the basis of the benchmark neither precludes nor requires a price adjustment for differences in the types of shares. However, under paragraph (a)(2)(iv), the Department intends to make the adjustment when it is appropriate and reasonably quantifiable. For an example of an adjustment to account for differences in the types of shares, see *Certain Atlantic Groundfish from Canada,* 51 FR 10047 (1986).

Two commenters, citing *AIMCOR* v. *United States,* 871 F. Supp. 447 (Ct. Int'l Trade 1994) (''*AIMCOR I*''), stated that the Department should ''clarify'' its equity methodology so as to preclude the use of previously issued, publicly-traded shares as benchmarks. These commenters claim that merely because a company has previously issued publicly-traded shares does not imply that the company could obtain fresh equity capital on the same terms from reasonable private investors. They claim that the Department's use of the price of outstanding shares is flawed because it recognizes neither the concept of earnings dilution (*i.e.,* the fact that newly-issued shares dilute the claims attributable to previously issued shares) nor the difference between replacement cost and market value. Finally, they argue that the Department's current methodology does not take into account differences between ''hybrid'' equity-like instruments issued to the government and previously issued equity instruments that do not have ''hybrid'' features.

With respect to these comments, paragraph (a)(2)(i) reflects a distinction between the *AIMCOR I* problem, where the ownership rights conferred upon the private shareholders differed from the ownership rights conferred upon the government, and the question of whether the publicly-traded price of previously issued shares is an adequate proxy for the price of newly-issued shares. Paragraph (a)(2)(i) recognizes the *AIMCOR I* problem by requiring that the Department use the same or ''similar'' shares for its benchmark, and by permitting the Department to make an adjustment for differences between the shares used as the benchmark and the government-provided equity.

As for the use of secondary market prices, the Department believes that it can improve the accuracy of the secondary market price benchmark by altering the timing of the calculation. In particular, we are proposing to use secondary market prices in the period immediately following a government equity infusion. We believe use of these prices will allow us to capture private investors' perceptions as to what the newly infused capital will allow the firm to achieve, and also will enable us to measure any dilution of ownership. In our view, paragraph (a)(2)(iv) is sufficiently flexible so as to permit the Department to calculate a benchmark based on prices paid during a time period that will permit a reasonable comparison with the government equity infusion. However, we are particularly interested in public comments on this issue.

Actual Private Investor Price Not Available

One of the most difficult methodological problems confronted by the Department in its administration of the CVD law involves the analysis of government-provided equity infusions in situations where there is no market benchmark price. This problem typically arises in the case of firms that are wholly owned by the government. Since 1982, the Department has dealt with this problem by categorizing firms as either ''equityworthy'' or ''unequityworthy.'' As set forth in § 355.44(e)(2) of the 1989 Proposed Regulations, an equityworthy firm was one that showed ''an ability to generate a reasonable rate of return within a reasonable period of time.'' An unequityworthy firm did not show such an ability. If the Department found that a firm was equityworthy, the Department would declare a government-provided equity infusion in the firm to be not countervailable. The Department would not consider whether, notwithstanding the general financial health of a firm, an excessive price was paid for government-provided equity. Conversely, if the Department found a firm to be unequityworthy, the Department would declare a government-provided equity infusion in the firm to be countervailable without further analysis.

In these regulations, we have retained the equityworthy/unequityworthy distinction. Thus, under paragraph (a)(3), if actual private investor prices are not available under paragraph (a)(2), the Secretary will determine whether the firm in question was equityworthy. Paragraph (a)(4) sets forth the standard the Secretary will apply in determining equityworthiness, and is virtually identical to § 355.44(e)(2) of the 1989 Proposed Regulations.

This distinction between equityworthy and unequityworthy firms has certain administrative advantages. However, as applied by the Department in the past, it was, to some extent, a rather simplistic approach to a complex problem. This point was driven home by the decision in *AIMCOR, Alabama Silicon, Inc.* v. *United States,* 912 F. Supp. 549 (Ct. Int'l Trade 1995) (''*AIMCOR II*''), in which the court ruled that, because of restrictions imposed on certain ''Class E'' shares, the government's purchase of those shares was inconsistent with commercial considerations, notwithstanding the fact that the firm in question was equityworthy. As stated previously by the court in *AIMCOR I,* ''[w]here a company is equity-worthy, as here, it does not necessarily follow that the purchase of stock from that company will be consistent with commercial considerations.'' 871 F. Supp. at 454.

While we do not necessarily agree with the court's resolution of the factual issue in *AIMCOR II (i.e.,* whether the purchase of Class E shares was inconsistent with commercial considerations), we do agree with the basic principle articulated by the court. Put in terms of the new statute, where a company is equityworthy, it does not necessarily follow that the purchase of stock from that company will be consistent with the usual investment practice of private investors. Accordingly, paragraph (a)(5) provides that if the Secretary finds a firm to be equityworthy, the Secretary will conduct a further examination to determine whether the particular investment was consistent with usual investment practice. Our intent here is not to conduct a further analysis if the government has purchased common shares in a firm. Instead, we will conduct a further analysis in situations, like *AIMCOR I,* in which the government has purchased shares to which special conditions or restrictions are attached.

Thus far, we have been discussing firms determined by the Department to be equityworthy. However, unequityworthy firms present the same problem: just as the Department's practice has oversimplified government-provided equity to equityworthy companies, it has also oversimplified government-provided equity to unequityworthy companies because it assumes that the shares purchased by the government are worthless. We have reconsidered this practice, adopted in the 1993 steel determinations, and have

proposed in these regulations an approach that is consistent with our general rule for equity which directs that consistency with the usual investment practice will normally be determined by reference to the price a private investor would pay for the shares.

This new approach, reflected in paragraph (a)(6)(i), provides that if the Secretary determines that a firm is unequity-worthy, the Secretary normally will measure the benefit conferred by a government equity infusion by estimating the price that a reasonable private investor would have paid for the shares purchased by the government. If the price paid by the government exceeds this estimated price, the amount of the benefit will be the difference between the two prices. In estimating the price that a reasonable private investor would have paid, the Secretary will rely only on information and analysis that existed at the time of the equity infusion, because this is the information that would have been available to a reasonable private investor.

At this time, we have not been able to develop a method for calculating the price that a reasonable private investor would have paid for the shares purchased by the government. Among the methods we have considered is an options pricing model, in which possible future returns would be valued using a standard pricing formula for equity call options. To use such a model, we would need to develop estimates for the underlying value of the option and the volatility of expected returns. We would especially welcome comments on the use of such a model for estimating share prices or any alternative methods.

It has long been recognized that the ideal approach to equity infusions in unequityworthy firms would be to estimate the price that a private investor would have paid for shares purchased by the government. *See* Holmer *et al., Identifying and Measuring Subsidies Under the Countervailing Duty Law: An Attempt at Synthesis,* in *The Commerce Department Speaks on Import Administration and Export Administration 1984* (Practising Law Institute 1984), at 444. This approach, which we will refer to as the ''constructed private investor price'' method (''CPIP'), corresponds most closely to the preferred methodology. However, in the past, the CPIP method has been rejected as impractical. *Id.*

Upon further consideration, we have concluded that before rejecting the CPIP method as impractical, we first should attempt to use it in actual cases. Our conclusion is reinforced by the fact that while our prior practice may not be unreasonable as a legal matter, it is even more reasonable to rely on a methodology that recognizes that, at least in some cases, shares of an unequityworthy firm may have some value.

We recognize that there may be instances in which the information necessary to estimate what a reasonable private investor would have paid simply does not exist or does not provide an appropriate basis for making such an estimate. Therefore, paragraph (a)(6)(ii) provides an alternative method for measuring the benefit conferred by an equity infusion in an unequityworthy firm. Under this alternative method, the Secretary would allocate the equity infusion to two or more years in accordance with paragraph (c)(2) (discussed below), and would adjust the amount allocated to a particular year by the amount of subsequent after-tax returns achieved in that year by the firm in question. The reason for accounting for subsequent returns is that under our preferred methodology, we are attempting to account for the reasonable private investor's expectations, at the time of the equity infusion in question, regarding a firm's future returns. If available information does not allow us to estimate those expected returns, the best proxy is the actual return earned on the investment. While this approach lacks the conceptual purity of the CPIP method, we believe it is preferable to the grant methodology, which treats *all* equity infusions in *all* unequityworthy firms as automatically worthless.

Although several comments were filed on our methodology for government-provided equity in unequityworthy companies, they fell into one of two camps. One group called for the Department to codify the grant methodology adopted in the 1993 steel cases. These commenters pointed to the fact that the grant methodology has been upheld by the CIT in *British Steel plc* v. *United States,* 879 F.Supp. 1254, 1309 (Ct. Int'l Trade 1995). *See also, Usinor Sacilor* v. *United States,* 893 F.Supp. 1112, 1125–26 (Ct. Int'l Trade 1995). They further maintained that this practice is consistent with the new law.

The other group of commenters urged the Department to return to the methodology it employed prior to the 1993 steel investigations, the so-called ''rate of return shortfall'' (''RORS'') methodology. In their view, the RORS methodology offers the best proxy for determining the amount by which the government overpaid for its shares. These commenters also cited to a GATT Panel Report that, in their view, squarely rejected the grant methodology. (*See United States—Imposition of Countervailing Duties on Certain Hot-rolled Lead and Bismuth Carbon Steel Products Originating in France, Germany and the United Kingdom*, SCM/185 (Nov.15, 1994) (unadopted).

Although the CIT has upheld the grant methodology for government-provided equity to unequityworthy firms, *AIMCOR I* led us to review our equity methodology in its entirety. We concluded that a finding of ''equityworthiness'' or ''unequityworthiness'' is not by itself a sufficient basis for measuring the benefit conferred by government-provided equity. Specifically, a finding that a firm is equityworthy does not mean that the government paid the price a private investor would have paid for the particular shares in question. Similarly, a finding that a firm is unequityworthy does not mean that a private investor would have paid nothing for the shares purchased by the government. Merely because the government could not expect a reasonable rate of return given the price it paid for its shares, it does not follow that the expected return on the investment is zero. In this respect, we believe that the grant methodology, like the RORS methodology it replaced, does not adequately account for the expectation held by the reasonable private investor, at the time of the infusion, of the company's future rate of return.

The methodology we have proposed in these regulations for both equityworthy and unequityworthy firms reflects our goal of determining the price a private investor would have paid in either an equityworthy or unequityworthy situation. We believe this approach is preferable to RORS because it attempts to use information available at the time of the government's equity purchase regarding the firm's expected return to calculate the price the government should have paid for the shares it purchased. Moreover, where a CPIP cannot be determined, we believe that the alternative methodology proposed in paragraph (a)(6)(ii) is a better reflection of the benefit conferred on an unhealthy (*i.e.*, unequityworthy) firm receiving government-provided equity than the RORS methodology. This is because, given our finding that the firm is unequityworthy, the best prediction we can make is that the value of the shares is zero. Our prediction may be wrong, and paragraph (a)(6)(ii) allows us to take into account the return we were not able to predict, but the prediction we make of a zero-share price is the best estimate we can make based on information that would have been

available to investors at the time the government made its equity purchase. Moreover, we believe that our willingness to take into account the return actually earned by the government addresses the concern raised by the GATT Panel.

Paragraph (a)(7) deals with allegations regarding equity infusions, and is based on § 355.44(e)(3) of the 1989 Proposed Regulations. In our view, § 355.44(e)(3) has not posed an undue burden on petitioners nor prevented the filing of meritorious allegations. However, it does ensure that allegations will consist of something more than a mere statement that a government owns a firm in whole or in part.

Paragraph (b) provides that the Secretary normally will consider the benefit from an equity infusion to have been received as of the date on which the firm received the infusion.

Paragraph (c) deals with the allocation of the benefit to particular years and provides in (c)(1) a general rule that the Secretary will normally allocate the benefit of an equity infusion over the same allocation period that would be used for a non-recurring grant. Paragraph (c)(2) provides that where the Secretary has measured the benefit by reference to actual or constructed private investor prices (and, thus, has calculated a premium that can be viewed as a grant), the Secretary will allocate the benefit as if it were a non-recurring grant, using the methodology set forth for such grants in § 351.503(c)(2). This approach is consistent with § 355.49(a)(3)(i) of the 1989 Proposed Regulations, which also required that equity infusions be treated as grants if a market-determined price was used to identify and measure the benefit.

Paragraph (c)(3) applies to equity infusions in unequityworthy firms in situations where the Secretary cannot use the CPIP method under paragraph (a)(6)(i). Paragraph (c)(2) also provides for the allocation of the equity infusion as if it were a non-recurring grant, but references the fact that the Secretary will adjust the allocated amount in accordance with paragraph (a)(6)(ii).

Section 351.507

Section 351.507 deals with assumptions or forgiveness of debt. Paragraph (a), which deals with the identification and measurement of the benefit attributable to government-provided debt assumptions or forgiveness, is little changed from § 355.44(k) of the 1989 Proposed Regulations. Paragraph (b) describes when the benefit from debt assumption or forgiveness will be deemed to have been received. Paragraph (c) provides that the Secretary will normally treat the benefit from debt assumption or forgiveness as a non-recurring grant for allocation purposes. However, where the government is assuming interest under certain narrowly-drawn circumstances, the interest assumption will be treated as a reduced-interest loan and allocated according to the loan allocation rules. Although it has undergone some refinement, this exception is consistent with the policy articulated by the Department in the 1993 steel determinations.

Section 351.508

Section 351.508 deals with subsidy programs that provide a benefit in the form of relief from direct taxes. (''Direct tax'' is defined in § 351.102.) The most common form of a direct tax is an income tax, and the subsidy programs most frequently encountered are those that provide special income tax exemptions, deductions or credits. With respect to the benefit provided by these types of programs, paragraph (a)(1) of § 351.509 retains the standard set forth in § 355.44(i)(1) of the 1989 Proposed Regulations; *i.e.*, a benefit exists to the extent that the taxes paid by a firm as the result of a program are less than the taxes the firm would have paid in the absence of the program. *See* 1989 Proposed Regulations, 54 FR at 23372, and cases cited therein.

Another type of direct tax program is the deferral of direct taxes owed. Although § 355.44(i)(1) included tax deferrals with exemptions and remissions of direct taxes, the Department has consistently used a different methodology for identifying and measuring the benefits of deferrals, treating deferrals as government-provided loans. Therefore, consistent with our practice, paragraph (a)(2) directs that the loan methodology described in § 351.504 will be applied to direct tax deferrals. Normally, deferrals of one year or less will be treated as short-term loans, while multi-year deferrals will be treated as short-term loans rolled over on the anniversary date(s) of the deferral.

Although the Department did not receive any private sector comments regarding direct tax subsidy programs, the Department has identified one aspect of its practice that might warrant modification. In the case of special accelerated depreciation allowances, a firm typically experiences tax savings in the early years of an asset's life and tax increases in the latter years of the asset's life. In the past, the Department has focused on the tax savings, but has not acknowledged the later tax increases. The Department is considering adopting a methodology that accounts for both the early tax savings and the later tax increases by calculating the net present value of the expected tax savings at the outset of the accelerated depreciation period. Before doing so, however, the Department would like to obtain the views of the private sector. We are also seeking private sector views on how the direct tax methodology should address losses, including loss carryforwards and treatment of losses under accelerated depreciation. Therefore, on these matters in particular, we encourage public comment.

Paragraph (b) of § 351.508 deals with the question of when the benefit from a direct tax subsidy is considered to have been received by a firm, and is based on § 355.48(b)(4) of the 1989 Proposed Regulations. As under current practice, the Secretary will consider the benefit from a tax exemption, deduction, or credit to have been received as of the date when the recipient firm can calculate the amount of the benefit, which normally will be when the firm files its tax return. In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit to have been received when the deferred tax becomes due. For a multi-year deferral, the benefit is received on the anniversary date(s) of the deferral.

Paragraph (c) deals with the allocation of the benefits of direct tax subsidies to particular time periods. As under current practice, the Department normally will allocate such benefits to the year in which the benefits are considered to have been received under paragraph (b).

Section 351.509

Section 351.509 deals with programs that provide full or partial exemptions from, and deferrals of, indirect taxes or import charges. (''Indirect tax'' and ''Import charge'' are defined in § 351.102). However, § 351.509 deals only with programs that potentially would be considered import substitution subsidies or domestic subsidies under section 771(5A)(C) or section 771(5A)(D) of the Act, respectively. Sections 351.516–518 deal with programs that potentially would be considered export subsidies under section 771(5A)(B) of the Act because they provide for an exemption or rebate of indirect taxes or import charges when a product is exported.

Paragraph (a)(1) of § 351.509 is based on § 355.44(i)(2) of the 1989 Proposed Regulations, and continues to provide that a benefit exists to the extent that the taxes or import charges paid by a firm as the result of a program are less than

the taxes the firm would have paid in the absence of the program. As in the case of direct taxes under § 351.508, deferrals of indirect taxes and import charges will be treated under paragraph (a)(2) as government-provided loans. Normally, deferrals of one year or less will be treated as short-term loans, while multi-year deferrals will be treated as short-term loans rolled over on the anniversary date(s) of the deferral.

Paragraph (b) of § 351.509 is based on § 355.48(b)(6) of the 1989 Proposed Regulations, and continues to provide that the Secretary will consider the benefit from a full or partial exemption of indirect taxes or import charges to have been received as of the date when the recipient firm otherwise would have had to pay the tax or charge. In the case of deferrals of one year or less, the Secretary normally will consider the benefit to have been received when the deferred amount becomes due. For multi-year deferrals, the benefit is received on the anniversary date(s) of the deferral.

Paragraph (c) deals with allocation to a particular time period, and provides that the Secretary normally will allocate (expense) to the year of receipt the benefits attributable to the types of subsidy programs covered by § 351.509.

Section 351.510

Section 351.510 deals with the provision of goods and services. As explained below, we have designated paragraph (a) as ''[Reserved]'' in order to first acquire some experience with the relevant statutory provision before codifying our methodology in the form of regulations. Paragraph (b) is based on § 355.48(b)(2) of the 1989 Proposed Regulations, and continues to provide that the benefit from a government-provided good or service is considered to be received when the firm pays, or is due to pay, for the good or service. Paragraph (c), which also is consistent with existing practice, provides that the Secretary will expense the benefit of a government-provided good or service to the year of receipt.

Adequate Remuneration

Prior to the URAA, section 771(5)(A)(ii)(II) of the Act provided that the provision of goods or services constituted a subsidy if such provision was ''at preferential rates.'' Now, under section 771(5)(E)(iv) of the Act, a subsidy exists if such provision is ''for less than adequate remuneration.'' Under section 771(5)(E) of the Act, the adequacy of remuneration is to be determined

> * * * in relation to prevailing market conditions for the good or service being provided * * * in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

One commenter suggested that we provide guidance in the regulations concerning how the Department intends to identify and measure adequate remuneration. Other commenters debated whether the Department is required to define adequate remuneration as the price that would exist absent government intervention in the marketplace. At this time, however, we are reluctant to go beyond the terms of the statute and the SAA. Instead, we intend to apply this new standard on a case-by-case basis. Once we have gained sufficient experience in actual cases, a codification of methodology may be appropriate. However, for the time being, we have designated paragraph (a) as ''[Reserved].''

We should note, however, that while ''adequate remuneration'' has replaced ''preferential'' as the standard, we do not believe this precludes us from continuing to apply certain preferentiality-based analyses we have used in the past. *See Pure Magnesium and Alloy Magnesium from Canada,* 57 FR 30946, 30949 (1992); and *Certain Fresh Cut Flowers from the Netherlands,* 52 FR 3301, 3302 (1987). There is no indication that Congress intended to change our practice with respect to government-provided goods and services such as electricity, water, or natural gas; *i.e.*, goods and services provided to a wide variety of users by a government-owned company that is usually the sole provider of the good or service.

We note further that where adequate remuneration is being ascertained by reference to the prices of goods (or services) imported into the country in question, we would propose to use the amount actually paid for the import. Hence, if the price of the imported good included antidumping or countervailing duties imposed by the country in question, we would use the price inclusive of those duties for comparison purposes. Absent the imposition of antidumping/countervailing duties by the country in question, however, we would not adjust the import prices to reflect alleged subsidies or dumping.

Infrastructure

We received several comments regarding the special specificity test for government-provided infrastructure set forth in § 355.43(b)(4) of the 1989 Proposed Regulations. Although the commenters suggested different modifications to this test, they all used § 355.43(b)(4) as a starting point.

Unlike the prior statute, section 771(5) of the Act, as amended by the URAA, expressly mentions government-provided infrastructure. However, it does so not in the context of specificity, but in the context of ''financial contribution,'' one of the prerequisites for a subsidy. Specifically, section 771(5)(D)(iii) of the Act, which implements Article 1.1(a)(1)(iii) of the SCM Agreement, provides that the term ''financial contribution'' includes the provision of ''goods or services, other than general infrastructure.'' In other words, the provision of ''general infrastructure'' does not constitute a ''financial contribution,'' and, thus, does not constitute a subsidy.

In light of the change in the statute, the countervailability of infrastructure depends on the definition of ''general infrastructure.'' However, we have no experience in applying this definition, and we are uncertain regarding the extent to which the principles reflected in § 355.43(b)(4) remain useful analytical tools for distinguishing potentially countervailable ''infrastructure'' from non-countervailable ''general infrastructure.'' Therefore, we are not issuing regulations on infrastructure at this time. Instead, we will apply the statutory definition on a case-by-case basis.

Section 351.511

Section 351.511 deals with the purchase of goods. Section 771(5)(E)(iv) of the Act provides that the purchase of goods by a government can confer a benefit if the goods are purchased ''for more than adequate remuneration.'' As discussed above in connection with the provisions of goods or services, the Department does not have any experience in applying an adequate remuneration standard. In addition, while government procurement was potentially a countervailable subsidy prior to the URAA, allegations of procurement subsidies were extremely rare. Thus, we do not even have experience on such matters as the ''timing'' of procurement subsidies or the allocation of such subsidies to a particular time period.

Therefore, given our lack of experience with procurement subsidies in general, and the adequate remuneration standard in particular, we are not issuing regulations concerning the government purchase of goods. Instead, we have designated Section 351.511 as ''[Reserved].''

In this regard, however, one commenter that suggested a regulation regarding government procurement stated that any such regulation should cover the government procurement of services. Although, for the reasons stated above, we are not promulgating a regulation on government procurement at this time, we should note that under section 771(5)(D)(iv) of the Act and Article 1.1(a)(1)(iii) of the SCM Agreement, only government procurement of goods is identified as a financial contribution.

Section 351.512

Section 351.512 deals with worker-related subsidies. Under paragraph (a), which is based on § 355.44(j) of the 1989 Proposed Regulations, the Department will continue to identify and measure the benefit of government-provided assistance to workers based on the extent to which such assistance relieves a firm of an obligation it otherwise normally would incur.

One commenter argued that the Department should clarify that worker assistance is countervailable only when the assistance relieves a firm of an existing *contractual or statutory* obligation. Such a clarification would prevent what this commenter considered to be an erroneous determination in *Certain Steel Products from Germany,* 58 FR 38318 (1993); *GIA* at 37256–57. In that case, the Department countervailed the Member State-funded portion of Article 56(2)(b) early retirement aid based on its conclusion that the government's contribution was likely to have an effect on the outcome of labor negotiations between steel producers and their workers. A different commenter, however, endorsed the Department's determination and the method used by the Department to measure the amount of the subsidy.

The Department disagrees with the proposal of the first commenter, because, in certain circumstances, the relief from an obligation that is not ''binding'' in a contractual or statutory sense nonetheless may provide a benefit to a firm that is readily identifiable and measurable. On the other hand, the Department is not prepared to codify the particular approach used in *Certain Steel Products from Germany*. Given the limited alternatives available in that case, we consider the approach used therein to be reasonable. At the same time, we acknowledged in the determination that the approach used was somewhat speculative, and we stated that we would consider further refinements in the future, particularly as part of any administrative review requested. However, because no such review was requested, we have not had the benefit of private sector comments, other than the two comments described above. Moreover, the determination remains the subject of litigation.

Nevertheless, we may deal with this issue in more detail in the final regulations. Therefore, we invite public comment on this issue in particular.

Paragraph (b) deals with the timing of worker-related subsidies. Most subsidies of this type are provided in the form of cash payments (grants), and paragraph (b) provides that the Secretary will consider the subsidy to have been received by the firm as of the date on which the payment is made that relieves the firm of the obligation it normally would incur. Paragraph (c) deals with the allocation of worker-related subsidies to a particular time period, and essentially treats these types of subsidies as recurring grants to be allocated (expensed) to the year of receipt.

Section 351.513

Section 351.513 contains a standard for determining when a subsidy is an export subsidy, as opposed to a domestic or import substitution subsidy. Consistent with section 771(5A)(B) of the Act, § 351.513 expands the definition of an export subsidy.

In particular, § 351.513 would overturn the practice described in *Extruded Rubber Thread from Malaysia,* 57 FR 38472 (1992). In that case, the Malaysian Government considered 12 criteria in evaluating whether a particular company should receive ''pioneer'' status. Two of these criteria addressed the export potential of a product or activity. In addition, in certain situations, companies had to agree to export commitments. In analyzing this program, the Department examined the number of criteria being applied with respect to a particular company. If one or more of the criteria applied by the Government included favorable prospects for export, but the export criteria did not carry preponderant weight, the Department did not consider the award of pioneer status to constitute an export subsidy. However, under the new standard contained in § 351.513, if exportation or anticipated exportation was either the sole or one of several criteria for granting pioneer status to a firm, we would consider any benefits provided under the program to the firm to be export subsidies.

This expanded definition of export subsidy is not intended to include situations where exportation or anticipated exportation is one of many criteria for awarding benefits under a program, but the firm in question has qualified to receive the benefits under non-export-related criteria. In these circumstances, the Department would not treat the subsidy to that firm as an export subsidy.

Section 351.514

Section 351.514 corresponds to paragraph (c) of the Illustrative List, and deals with preferential internal transport and freight charges on export shipments. Paragraph (a)(1) restates the general principle that a benefit exists to the extent that a firm pays less for the transport of goods destined for export than it would for the transport of goods destined for domestic consumption. In addition, paragraph (a)(2), which is based on § 355.44(g)(2) of the 1989 Proposed Regulations, provides that the Secretary will not consider a benefit to exist if differences in charges are the result of an arm's length transaction or are commercially justified.

Paragraph (b) provides that the Secretary will consider the benefit to have been received as of the date on which the firm pays or, in the absence of payment, was due to pay the transport or freight charges. Paragraph (c) provides that the Secretary will allocate (expense) the benefit to the year in which the benefit is received.

Section 351.515

Section 351.515 deals with the government provision of goods or services on favorable terms or conditions to exporters. Like its predecessor, § 355.44(h) of the 1989 Proposed Regulations, § 351.515 is based on paragraph (d) of the Illustrative List, and reflects the changes to paragraph (d) made as part of the Uruguay Round. Paragraph (a) contains the standard for determining the existence and amount of the benefit attributable to these types of subsidy programs. As paragraph (a)(2) makes clear, in determining whether the domestically sourced input is being provided on more favorable terms than are commercially available on world markets, the Department will add to the world market price delivery charges to the country in question. In our view, delivered prices offer the best measure of prices that are commercially available to exporters in that country. Furthermore, it has been suggested that commercially available prices in world markets may include dumped or subsidized prices and we invite comment on this issue. Paragraphs (b) and (c) contain rules regarding the timing of benefit receipt and the

allocation of the benefit to a particular time period, respectively.

One commenter argued that the Department should provide that all export subsidy payments are prohibited *per se* under the SCM Agreement and U.S. law, and that nothing in paragraph (d) permits them. According to this commenter, in the past, foreign governments have claimed an exception to paragraph (d) for practices that protect domestic markets while promoting subsidized exports of agricultural and manufactured goods. The example cited was the European Community (''EC'') program providing ''export restitution'' payments or ''export refunds'' on durum wheat, the primary agricultural product used in the production of pasta. The commenter stated that these refunds were prohibited because paragraph (d) applied only to the ''provision'' of goods and/or services, not export payments, and that the Department's regulations should clearly prohibit export ''payments.''

This argument is identical to one put forth by petitioners in the 1985 administrative review on *Iron Construction Castings from India,* 55 FR 50747, 50748 (1990). In that case, India's International Price Reimbursement Scheme (''IPRS'') provided payments to castings exporters, refunding the difference between the price of raw materials purchased domestically and the price exporters otherwise would have paid on the world market. The Department refused to examine whether the IPRS met the criteria for non-countervailability under the exception in item (d) and countervailed the IPRS payments in their entirety.

Exporters and importers challenged the Department's determination, and, in its decision in *Creswell Trading Co.* v. *United States,* 783 F. Supp. 1418 (1992), the CIT remanded the case to the Department with instructions to analyze the consistency of the IPRS with item (d). The Federal Circuit discussed this decision with approval in connection with an appeal from a second CIT decision in this same case. *See Creswell Trading Co.* v. *United States,* 15 F. 3d 1054 (1994). Therefore, based on the above judicial precedent, we must disagree with the commenter that paragraph (d) does not apply to programs where a government reimburses an exporter for the difference between a higher domestic price for an input and a lower price that the exporter would have paid on the world market, as opposed to providing the input itself.

Also consistent with the Federal Circuit's decision in *Creswell,* where a program exists that provides inputs for exported goods at a lower price than is available for inputs for use in the production of goods for domestic consumption, the burden will be on respondents to provide evidence that the lower price reflects the price that is commercially available on world markets.

Section 351.516

Section 351.516 deals with the remission or rebate upon export of indirect taxes. (''Indirect tax'' is defined in § 351.102.) Section 351.516 is consistent with longstanding U.S. practice, *see Zenith Radio Corp.* v. *United States,* 437 U.S. 443 (1978), and is based on paragraph (g) of the Illustrative List. Paragraph (g) deals with indirect taxes, such as value added taxes, and provides that the remission or rebate of such taxes constitutes an export subsidy only if the amount of the remittance or rebate is excessive; *i.e.,* if it exceeds the amount of indirect taxes levied on like products sold for domestic consumption. For example, if a government imposes a $5 tax on a widget sold for domestic consumption and provides a $10 rebate if the same type of widget is exported, an export subsidy exists in the amount of $5. However, a corollary of paragraph (g) is that the exemption or non-excessive remission upon export of indirect taxes does not constitute a subsidy. *See* note 1 of the SCM Agreement.

Paragraph (b) provides that the benefit from an excessive rebate of indirect taxes is deemed to be received on the date of exportation. Paragraph (c) provides that the Secretary will expense these types of subsidies to the year of receipt.

Section 351.517

While § 351.516 deals with the exemption or remission of indirect taxes in general, § 351.517 deals with the exemption, remission, or deferral of prior-stage cumulative indirect taxes. (''Prior-stage indirect tax'' and ''cumulative indirect tax'' are defined in § 351.102.) Section 351.517 is based on paragraph (h) of the Illustrative List, and reflects certain changes made to paragraph (h) as part of the Uruguay Round negotiations. Section 351.517 is intended to be consistent with paragraph (h) and the *Guidelines on Consumption of Inputs in the Production Process* (Annex II to the SCM Agreement).

Section 351.17 is drafted to address separately exemptions, remissions and deferrals of prior stage cumulative indirect taxes. Paragraph (a)(1) deals with exemptions and states that where inputs are exempt from prior stage cumulative indirect taxes, a benefit exists to the extent that the exemption extends to inputs not consumed in the production of the exported product, making normal allowance for waste. (''Consumed in the production process'' is defined in § 351.102.) Where a benefit exists, it is equal to the amount of the taxes the firm would otherwise pay on inputs not consumed in the production of the exported product.

Paragraph (a)(2) addresses remissions of indirect taxes and states that a benefit exists to the extent that the amount remitted exceeds the amount of prior stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. Where a benefit exists, paragraph (a)(2) sets forth a general rule to the effect that the amount of the benefit normally will equal the difference between the amount remitted and the amount of prior stage cumulative indirect taxes on inputs that are consumed in the production of the exported product. However, paragraph (a)(2) further directs, based on Annex II to the SCM Agreement, that the Secretary may consider the entire amount of a remission of prior-stage cumulative taxes to be a benefit if the Secretary determines that the foreign government has not examined the actual inputs in order to confirm which inputs are consumed in the production of exported products and in what amounts, and the taxes that are imposed and paid on those inputs. This qualification is essentially a modified version of the Department's ''linkage test,'' a test upheld in *Industrial Fasteners Group, American Importers Ass'n* v. *United States,* 710 F.2d 1576 (Fed. Cir. 1983).

Paragraph (a)(3) deals with the amount of the benefit attributable to a deferral of prior-stage cumulative indirect taxes. Consistent with footnote 59 to the SCM Agreement, the first sentence of paragraph (a)(3) provides that a deferral does not give rise to a benefit if the government charges appropriate interest on the taxes deferred. Otherwise, the second sentence of paragraph (a)(3) provides that the Secretary will determine the amount of benefit by treating the tax deferral as if it were a government-provided loan in the amount of the taxes deferred. Normally, deferrals of one year or less will be treated as short-term loans, while multi-year deferrals will be treated as short-term loans rolled over on the anniversary date(s) of the deferral.

Paragraph (b) deals with the time of receipt of the benefit. Paragraph (b)(1) provides that in the case of a tax exemption, the benefit is received as of the date on which the tax otherwise would have been due. Paragraph (b)(2) provides that in the case of a tax remission, the benefit arises as of the date of exportation. Paragraphs (b)(3) and (b)(4) address deferrals, stating that the Secretary will normally treat the benefit as having been received when the tax would otherwise be due, for a deferral of one year or less, or on the anniversary date(s) of the deferral for multi-year deferrals. Paragraph (c) deals with the allocation of the benefit to a particular time period, and provides that the Secretary will allocate (expense) the benefit from an exemption, remission, or deferral of prior-stage cumulative indirect taxes to the year of receipt.

Section 351.518

Section 351.518 deals with the remission or drawback of import charges. Section 351.518 generally is consistent with prior Department practice, but contains some revisions to reflect changes made to paragraph (i) of the Illustrative List during the Uruguay Round negotiations. Section 351.518 is intended to be consistent with paragraph (i), the *Guidelines on Consumption of Inputs in the Production Process,* and the *Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies* (Annex III to the SCM Agreement).

Paragraph (a)(1) reflects the longstanding principle that governments may remit or drawback import charges levied on imported inputs when the finished product is exported. However, if the amount remitted or drawnback exceeds the amount of import charges levied, a benefit exists.

Paragraph (a)(2) deals with so-called ''substitution drawback.'' Under a substitution drawback system, a firm may substitute domestic inputs for imported inputs without losing its eligibility for drawback. However, a benefit exists if the amount drawnback exceeds the amount of import charges levied on imported inputs, or if the export of the finished product does not occur within a reasonable time (not to exceed two years) of the import of the inputs.

Paragraph (a)(3) deals with the calculation of the amount of benefit attributable to an excessive remission or drawback of import charges. Paragraph (a)(3)(i) sets forth the general rule that the amount of the benefit equals the difference between the amount remitted or drawnback and the amount of import charges levied initially on the imported inputs for which the remission or drawback is claimed. For example, assume that a firm imports widgets to produce gizmos, and pays $2 in import duties per widget. If, when the firm exports finished gizmos, the firm receives $5 in drawback, the benefit equals $3 ($5 − $2=$3).

However, paragraph (a)(3)(ii) provides that in certain circumstances, the Secretary may consider the amount of the benefit to equal the amount of the remission or drawback. Paragraph (a)(3)(ii) provides for a ''linkage'' test, and is essentially identical to § 351.517(a)(2)(ii). See discussion of § 351.517(a)(2)(ii), above.

Paragraph (b) provides that the Secretary normally will consider the benefit to have been received as of the date of exportation. Paragraph (c) provides that the Secretary normally will allocate this benefit to the year in which it is received.

Section 351.519

Section 351.519 deals with export insurance. Paragraph (a), which deals with the benefit attributable to export insurance, is based on paragraph (j) of the Illustrative List. Paragraph (a) differs from the section of the 1989 Proposed Regulations dealing with export insurance, § 355.44(d). First, to reflect changes made to the Illustrative List during the Uruguay Round, the word ''manifestly'' has been deleted.

Second, § 355.44(d) required that an export insurance program must have exhibited losses for a five-year period before the Secretary would consider the program a countervailable subsidy. We have not included the five-year loss requirement in these regulations, because, depending on how an export insurance program is structured, it may be evident earlier than five years that premiums will be inadequate to cover the long-term operating costs and losses of the program. On the other hand, where the program is structured in such a way that expected premiums can cover expected long-term operating costs and losses, we anticipate that we will continue to apply the five-year rule. For example, we would continue to apply the five-year rule to programs like the Israeli Exchange Insurance Scheme. With respect to this program, we originally determined that it was structured so as to be self-balancing in the sense that it could reasonably be expected to break even over the long term. *See Potassium Chloride from Israel,* 49 FR 36122, 36214 (1984). Therefore, we did not find a countervailable subsidy despite losses in the early years of the program. However, after observing losses for five years, we concluded that the premiums charges were inadequate, and we determined that the scheme conferred a countervailable benefit.

Finally, § 355.44(d)(1) stated that the Department would take into account income from other insurance programs operated by the entity in question. We have reconsidered this policy, and, although we do not have much experience in this regard, have concluded that this requirement may be overly restrictive. For example, there may be instances where the insuring entity operates on a commercial basis, except for the export insurance function that may be specifically underwritten by the government. In such a situation, it would be inappropriate to take into account the insuring company's income from other insurance programs.

Section 351.520

Section 351.520 continues and codifies the Department's practice with respect to certain types of government export promotion activities. As the Department has observed in the past, most countries, including the United States, maintain general export promotion programs. As long as these programs provide only general information services, such as information concerning export opportunities or government advocacy efforts on behalf of a country's exporters, they do not confer a benefit for purposes of the CVD law. However, if, for example, such activities promoted a specific product or provided financial assistance to a firm, a benefit could exist under one of the other provisions of subpart E.

Section 351.521

Section 771(5A)(C) of the Act defines an ''import substitution subsidy'' as ''a subsidy that is contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions.'' As stated in the Senate Report, ''the category of import substitution subsidies is a new one that is neither part of the 1979 Subsidies Code nor included in current law.'' S. Rep. No. 412, 103rd Cong., 2d Sess. 93 (1994). Under the new law, import substitution subsidies are automatically considered to be specific.

Two domestic parties commented that the Department should state in its regulations that import substitution subsidies include subsidies that are contingent ''in law or in fact'' upon the use of domestic over imported goods. The quoted language is included in the export subsidy definition in section 771(5A)(B) of the Act, but does not

appear in the import substitution subsidy definition in section 771(5A)(C) of the Act. One of the parties argued that similar language should be included in a regulatory definition of import substitution subsidy to avoid a ''potential loophole'' for *de facto* import substitution subsidies.

We agree with these commenters that the statute does not expressly state that import substitution subsidies include those that are contingent ''in law or in fact'' upon the use of domestic over imported goods. On the other hand, however, the plain language of section 771(5A)(C) does not limit the definition of import substitution subsidies to only those subsidies that are contingent ''in law'' upon the use of domestic goods.

Because of the Department's lack of experience in dealing with this new category of subsidies, we are not issuing a regulation at this time on this particular point. Instead, we intend to develop our practice regarding import substitution subsidies on a case-by-case basis. However, the omission at this time of explicit ''in law or in fact'' language from these regulations should not be construed as an indication that the Department believes that section 771(5A)(C) applies only to *de jure* import substitution measures.

Section 351.522

Certain Agricultural Subsidies

Section 771(5B)(F) of the Act implements provisions of the WTO Agreement on Agriculture regarding the noncountervailable status of certain ''domestic support measures.'' Under Annex 2 of the Agreement on Agriculture, domestic support measures that meet the policy-specific criteria and conditions of Annex 2 are exempt from Member countries' commitments to reduce subsidies. In addition, Article 13(a) of the Agreement on Agriculture directs that these subsidies, commonly referred to as ''green box'' subsidies, will be noncountervailable during the nine-year implementation period described in Article 1(f) of the Agreement on Agriculture.

In accordance with section 13(a) of the Agreement, section 771(5B)(F) of the Act provides that the Secretary will treat as noncountervailable domestic support measures that (1) are provided with respect to products listed in Annex 1 of the Agreement on Agriculture, and (2) that the Secretary ''determines conform fully to the provisions of Annex 2'' of that Agreement. To implement section 771(5B)(F), § 351.522 sets out the criteria the Secretary will consider in determining whether a particular domestic support measure conforms fully to the provisions of Annex 2.

One commenter argued that the regulations should require the Secretary to consider whether or not an alleged green box subsidy has trade distorting effects. Further, the commenter noted that the SAA enumerates certain U.S. programs that meet the green box criteria. According to the commenter, the regulations should explicitly treat as noncountervailable a foreign program that is similar to an enumerated U.S. program. This same commenter also argued that the list of eight types of direct payments to producers included in Annex 2 is illustrative, not exclusive. The commenter stated that the regulations should provide ''precise, objective and even-handed'' criteria for determining whether a particular subsidy is a green box subsidy. A second commenter disputed the suggestion that the regulations should include a list of agricultural programs that the Secretary automatically would consider as noncountervailable. According to this commenter, there is no basis in the statute for automatically exempting particular programs from the CVD law. Instead, this commenter argued, the Department should assess whether particular programs meet the green box criteria on a case-by-case basis.

The Department believes there is little to be gained from enumerating in the regulations specific types of programs that would qualify automatically as green box subsidies. Annex 2 of the Agreement provides explicit criteria that a program must meet to receive green box status, and § 351.522 reflects the plain language of these criteria. Consistent with section 771(5B)(F) of the Act and the Agreement on Agriculture, paragraph (a) of § 351.522 provides that the Secretary will treat as noncountervailable a subsidy provided to an agricultural product listed in Annex 1 of the Agreement if the subsidy fully conforms to both the basic criteria of subparagraphs (a) and (b) of paragraph 1 of Annex 2 and the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of that Annex.

In this regard, we received two comments concerning the so-called ''peace clause'' in the Agreement on Agriculture. Specifically, Articles 13 (b) and (c) of that Agreement require WTO Member countries to exercise ''due restraint'' in initiating CVD proceedings on agricultural subsidies provided by a Member whose total non-green box agricultural subsidies (both domestic and export) are within that Member's reduction commitments. *See* SAA at 67–69. The obligation to exercise ''due restraint'' exists only during the ''implementation period,'' defined in Article 1(f) of the Agreement on Agriculture.

One commenter argued that the Department's regulations should ensure that the Department exercises due restraint by not self-initiating CVD investigations on products that benefit from subsidies described in Articles 13 (b) and (c). A second commenter argued that the Department should interpret the due restraint clause narrowly.

We do not believe that a regulation is necessary on this particular point. The Department understands the due restraint requirement to entail a commitment to refrain from self-initiating CVD investigations, and the Department will administer the statute accordingly.

Green Light Subsidies in General

Under section 771(5B), which implements Article 8 of the SCM Agreement, certain domestic subsidies and domestic subsidy programs are treated as noncountervailable, notwithstanding the fact that they are specific under section 771(5A)(D) of the Act. There are three categories of these so-called ''Green Light'' subsidies: (1) Research subsidies (*see* section 771(5B)(B) of the Act); (2) subsidies to disadvantaged regions (*see* section 771(5B)(C) of the Act); and (3) subsidies for adaptation of existing facilities to new environmental requirements (*see* section 771(5B)(D) of the Act). Although at this time we are not promulgating regulations regarding Green Light subsidies, we received many comments concerning this category of subsidies, and we address those comments here.

The noncountervailable status of these Green Light subsidies can be established in two ways. First, a WTO Member country can notify a subsidy program to the WTO SCM Committee in accordance with Article 8.3 of the SCM Agreement. Once notified, section 771(5B)(E) provides that a Green Light subsidy program ''shall not be subject to investigation or review'' by the Department. However, an exception to this rule exists in situations where a member country has successfully challenged in the WTO a claim for Green Light status. In the event of a successful challenge, section 751(g) and section 775 of the Act establish mechanisms for promptly including the subsidy or subsidy program in an existing CVD proceeding should there be reason to believe that merchandise subject to the proceeding may be benefiting from the subsidy or subsidy program.

The second method for obtaining Green Light status involves situations where a subsidy program has not been notified to the SCM Committee. In the case of a subsidy given under a non-notified program, the subsidy is noncountervailable if the Secretary determines in a CVD investigation or review that the subsidy satisfies the relevant Green Light criteria contained in subparagraphs (B), (C) or (D) of section 771(5B). However, the Secretary must determine that the subsidy satisfies *all* of the relevant criteria before a given subsidy will be treated as noncountervailable. *See* section 771(5B)(A) of the Act; SAA at 266. Moreover, as discussed in the SAA, in investigations and reviews of non-notified subsidies, the burden will be on the party claiming Green Light status to present evidence demonstrating that a particular subsidy meets all of the relevant criteria. SAA at 266. In addition, under section 771(5B)(A) of the Act, Green Light status may be claimed only in proceedings involving merchandise imported from a WTO Member country.

In accordance with the Administration's commitment in the SAA, the Department intends to strictly construe the various Green Light provisions to ''limit the scope of the provision(s) to only those situations which clearly warrant non-countervailable treatment.'' SAA at 265. Thus, the Department ''will not limit its analysis * * * to a narrow review of the technical criteria of Article 8 of the SCM Agreement, but will analyze all aspects of the subsidy program and its implementation to ensure that the purposes and terms of Article 8 have been respected.'' SAA at 267.

Under the transition rules set forth in section 291 of the URAA, the new law applies to investigations and administrative reviews initiated on the basis of post-January 1, 1995 requests. As with other issues that arise in such investigations and reviews, the Department will consider claims for Green Light treatment as parties present such claims to the Department. A Department determination that a particular subsidy received by a firm is a Green Light subsidy would not necessarily mean that the Department would find the entire program under which the subsidy is provided satisfies all of the applicable Green Light criteria in all cases.

Certain commenters suggested that the Department ''incorporate fully'' in the regulations the discussion of Green Light subsidies contained in the SAA. We do not believe this is necessary. As discussed above, our general approach to the drafting of these regulations has been to avoid simply repeating the language of the statute and/or the SAA.

Investigation of Notified Subsidies

One commenter, noting the text of section 771(5B)(E), suggested that the Department should refrain from investigating notified subsidy programs. According to the commenter, a failure to ''screen out'' notified subsidies prior to the initiation of an investigation would result in a waste of Departmental resources and unnecessary burdens on foreign governments.

In response, several commenters argued that if there is any ambiguity regarding whether a subsidy alleged by a petitioner does, in fact, qualify as a notified Green Light subsidy, the Department should include the subsidy in its CVD investigation or review to determine whether it qualifies for a Green Light exemption. One example given by these commenters is a situation where a petitioner presents evidence that a subsidy program has been modified subsequent to its notification to the SCM Committee. These commenters also suggested that it may simply be unclear whether an alleged subsidy is the same as the notified subsidy, in which case the Department should include the alleged subsidy in the investigation to make this determination.

In replying to these comments, we note that section 771(5B)(E) of the Act and the SAA make clear that if a subsidy program has been notified under Article 8.3 of the SCM Agreement, any challenge regarding its eligibility for Green Light treatment, whether due to later modification or otherwise, must be made through the review procedures under the WTO rather than in the context of a CVD proceeding. As described above, Commerce may not initiate a CVD investigation or review of a notified subsidy program (which appears to benefit subject merchandise) unless informed by USTR that a violation has been determined under the procedures of Article 8.

However, the identity of a subsidy is a different matter. If there is a legitimate question as to whether a subsidy alleged in a petition is, in fact, a subsidy that has been notified under Article 8.3, the Department will include the subsidy in a CVD investigation or review in order to resolve the identity of the subsidy in question. If a party claiming Green Light status demonstrated that the alleged subsidy had been notified, that would be the end of the analysis, and the Department would not inquire further as to the subsidy's conformance with the applicable Green Light criteria. If the party failed to establish that the alleged subsidy program had been notified, then the Department would analyze the subsidy's eligibility for Green Light status in the same manner as for any other non-notified subsidy.

Nevertheless, the Department is not promulgating a regulation concerning this issue at this time. While the manner in which the Department would proceed in the situation described appears fairly straightforward, our lack of experience in administering the new Green Light provisions leaves open the possibility that questions of interpretation will arise that cannot be foreseen at this time.

Policy for Investigating Non-Notified Subsidies

One commenter argued that the Department should adopt a regulation providing that, whenever a petition includes a potential Green Light subsidy that has not been notified under Article 8.3, the Department will conduct a full investigation to determine whether the subsidy meets the relevant requirements of section 771(5B). This commenter and others emphasized that the regulations also should include the SAA's express requirement that the party claiming Green Light status has the burden of presenting evidence demonstrating compliance with all of the relevant criteria for any particular subsidy category. *See* SAA at 266.

While we do not disagree with the policy espoused, we do not believe that this policy must be codified in the regulations. As discussed above, the statute and the SAA are clear that in investigations and reviews of subsidies that have not been notified under Article 8.3 of the SCM Agreement, the party claiming Green Light status has the burden of presenting evidence demonstrating that a particular subsidy meets all of the relevant criteria for noncountervailable status.

Alleged Green Light Subsidies not Used During the Period of Investigation or Review

Although this issue was not raised by any of the commenters, the Department believes that, in an investigation or a review of a CVD order or suspended investigation, the Department should not consider claims for Green Light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the Green Light status of a subsidy should be considered only in an investigation or review of a time period where the

subject merchandise did receive a benefit from the subsidy. However, the Department does not believe that a regulation is needed to clarify this issue.

Research Subsidies

Prior to the enactment of the URAA, the Department treated assistance provided by a government to finance research and development (''R&D'') as noncountervailable if the R&D results were (or would be) made available to the public, including the U.S. competitors of the recipient of the assistance. This policy, sometimes referred to as the public availability test, was described by Commerce in § 355.44(l) of the 1989 Proposed Regulations. One commenter argued that the Department should reaffirm the public availability test.

The Department has not retained the public availability test in these regulations. We believe that the objectives served by the public availability test are better met by applying the criteria listed in section 771(5B)(B) of the Act and Article 8.2(a) of the SCM Agreement.

Another commenter argued that, in determining whether a given research subsidy falls within the 75 and 50 percent maximum allowed under section 771(5B)(B), the Department should base its analysis on the total costs incurred over the duration of the project in question. Under this reasoning, the Department would not countervail a subsidy if the 75 or 50 percent maximum was exceeded during the year under investigation or review, provided that the applicable threshold ''is not exceeded over the life of the project.'' This commenter further argued that, if the Department determined that the applicable threshold was exceeded over the life of the project, only the amount of subsidy in excess of the relevant ''maximum'' should be countervailed.

Several commenters challenged these arguments. First, they argued that the Department should evaluate the 75 and 50 percent maxima based on the costs already incurred at the time of the relevant investigation or administrative review, and not on the basis of expected costs over the lifetime of the project. Second, these commenters argued that, if the Department determined that the applicable threshold had been exceeded, the entire benefit—not just the excess over the relevant threshold—should be countervailed. According to these commenters, the SAA states clearly that all of the relevant criteria must be met for a given program to receive Green Light status, and that a failure to meet all relevant criteria would result in the ''entire subsidy'' being countervailable in full. *See* SAA at 266.

The Department agrees in part with the first commenter, and in part with the latter commenters. With respect to the proper frame of reference for determining whether a given research subsidy has exceeded the 75 or 50 percent maximum, section 771(5B)(B)(iii)(II) of the Act instructs the Department to base its analysis on ''the total eligible costs incurred over the duration of a particular project.'' Thus, it would be improper for the Department to limit its analysis to only those costs incurred as of the time period covered by an investigation or administrative review. The Department agrees, however, that if, over the duration of a project, the subsidy exceeds the 75 or 50 percent threshold, the entire amount of the subsidy is countervailable, not merely the excess. Also, if it is indisputable at the outset of the project that the relevant threshold will be exceeded, the entire amount of the subsidy is countervailable.

Subsidies to Disadvantaged Regions

One commenter suggested that the Department should clarify that the Green Light category regarding subsidies to disadvantaged regions is not limited to subsidies provided by national governments, but also includes subsidies granted by subnational levels of government, such as states or provinces. This commenter further argued that, in determining whether a subsidy provided by a state or province to a disadvantaged region meets the criteria of section 771(5B)(C) of the Act, the Department should assess the criteria within the framework of the subnational government's jurisdiction.

In response, other commenters argued that the Department should assess the Green Light criteria in relation to the investigated country as a whole, not just in relation to the jurisdiction of the subsidizing government if that government is at the subnational level. According to these commenters, the statute and the SAA instruct the Department to evaluate the relevant Green Light criteria in relation to the ''average for the country subject to investigation or review.''

We agree with the first commenter that the Green Light categories include subsidies granted by governments at the subnational level, and that, in the case of the regional category, the Department should assess the relevant criteria in relation to the jurisdiction of the granting authority. In discussing the language in section 771(5B)(C)(ii) of the Act regarding the ''average for the country subject to investigation or review,'' the SAA explains that, where a CVD proceeding involves a member of a customs union, the term ''country'' shall be defined in accordance with the structure of the regional assistance program. SAA at 264. For example, if the Department were to investigate a product from Luxembourg, the term ''country'' would refer to the EC as a whole if the subsidy being investigated was received under an EC regional assistance program. Thus, the SAA indicates that the Department should make its determinations based on averages for the jurisdiction granting the regional assistance subsidy. Although the Department is not promulgating a regulation on this point, the Department intends to adopt this approach as a matter of practice.

Subsidies for Adaptation of Existing Facilities to New Environmental Requirements

One commenter argued that, with respect to the Department's criteria for Green Light environmental subsidies described in section 771(5B)(D) of the Act, the Department should treat as noncountervailable those subsidies given to upgrade existing facilities to environmental standards that are higher than the minimum standards imposed by law or regulation. According to this commenter, ''[g]overnments should be allowed the flexibility to encourage higher environmental standards than the minimum required by law when government shares the additional costs of achieving the higher environmental standards.''

Several commenters dispute this suggestion, claiming that section 771(5B)(D)(i) specifically limits Green Light status for environmental subsidies to those that are ''provided to promote the adaptation of existing facilities to new environmental *requirements* * * *.'' According to these commenters, the Department has no authority to broaden the scope of environmental subsidies eligible for Green Light treatment.

Although we acknowledge that governments should have the flexibility to encourage higher environmental standards, the Department agrees with the latter commenters. As noted above, section 771(5B)(D)(i) provides that noncountervailable environmental subsidies are those that are ''provided to promote the adaptation of existing facilities to new environmental *requirements* that are imposed by statute or by regulation * * *.'' According to the SAA, ''strict application of these requirements is essential in order to limit the scope of the provision to only those situations

which clearly warrant non-countervailable treatment.'' SAA at 267. Given the clear language of the statute and the SAA, the Department believes that subsidies given to upgrade existing facilities to environmental standards in excess of legal requirements are countervailable.

Section 351.523

Section 351.523 deals with the identification and measurement of upstream subsidies. Because the URAA did not significantly amend the corresponding statutory provision, section 771A of the Act, § 351.523 is based largely on § 355.45 of the 1989 Proposed Regulations, except for the deletion of language that merely repeats the statute. However, we have made one change that reflects a change in practice regarding the identification and measurement of the competitive benefit bestowed by an upstream subsidy. Before turning to that change, we note that we have adopted certain new terminology in § 351.523(a). Specifically, we have replaced ''control'' with ''cross ownership.'' *See* § 351.524(b)(6) for an explanation of ''cross ownership.''

Regarding ''competitive benefit'' and upstream subsidies, § 351.523 sets forth the standard for determining whether a competitive benefit exists. In this regard, section 771A(b)(1) of the Act provides that a competitive benefit exists when

> * * * the price for the (subsidized) input product is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

In addition, section 771A(b)(2) of the Act provides that when the Secretary has determined in a previous proceeding that a countervailable subsidy is paid or bestowed on the comparison input product, the Department ''may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the countervailable subsidy, or (B) select in lieu of that price a price from another source.''

In the past, as reflected in § 355.45(d) of the 1989 Proposed Regulations, the Department preferred to base its comparisons upon the price charged for unsubsidized inputs produced by other producers in the same country as the producer of the subject merchandise. If the Department had determined in a prior CVD proceeding that a countervailable subsidy had been bestowed in the subject country on the comparison input, the Department's next preferred alternative was to adjust the price of the input product to reflect the subsidy. As a final alternative, the Department could select a ''world market price for the input product.'' The Department interpreted the phrase ''world market price'' broadly to include (1) actual prices charged for the input product by producers located in other countries, and (2) average import prices. Additionally, because the statute did not preclude, for comparison purposes, the use of prices of subsidized, imported inputs, the Department had determined that it would be ''inappropriate to exclude all subsidized producers, even assuming that we could identify them.'' *Circular Welded Non-Alloy Steel Pipe From Venezuela; Final Determination*, 57 FR 42964, 42967–68 (1992).

We have revised our approach regarding ''competitive benefit'' in the following manner. Under paragraph (c)(1)(i), we will rely first upon the actual price charged or offered for an unsubsidized input product, regardless of whether the producer of that input is located in the same country as the producer of the subject merchandise. Upon further reflection, we see no justification for distinguishing between input products based on the country of production. Section 771A(b)(1) of the Act merely requires the Department to compare the price paid for the subsidized input product to the price that the producer ''would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.'' The price that the producer ''would otherwise pay'' could include the actual price paid by the producer of subject merchandise to an unrelated supplier or a bid offered by an unrelated supplier, regardless of the location of that supplier.

If actual prices or offers for unsubsidized inputs are not available, we have concluded that it is preferable to rely upon an average of publicly available prices for unsubsidized inputs from different countries or some other surrogate price deemed appropriate by the Department. *See* paragraph (c)(1)(ii). Only if there are no prices for unsubsidized inputs available from any source will we adjust the price of the comparison input product to reflect a countervailable subsidy. In such a case, under paragraph (c)(1)(iii), we first will rely upon the actual price that the producer of the subject merchandise otherwise would pay for the input product adjusted to reflect the subsidy, regardless of the country in which the input product is produced. If such a price is not available, under paragraph (c)(1)(iv), the Department would use an average price for the input product from different countries adjusted to reflect the subsidy or some other adjusted surrogate price. Only when no adjustable price is available (*e.g.*, the only available price is a published price reflecting an average of both subsidized and non-subsidized prices), would we rely upon the price of a subsidized input. *See* paragraph (c)(1)(v).

We believe that the approach described in the preceding paragraph better reflects the overall purpose of the upstream subsidies provision, which is to account, when appropriate, for upstream subsidies provided on input products used in the production or manufacture of subject merchandise. The language of section 771A itself does not express a preference regarding the selection of a comparison input price, and grants the Department wide latitude in determining when to adjust the price of the comparison product to reflect known countervailable subsidies. However, parts of the legislative history underlying the Trade and Tariff Act of 1984, which added section 771A to the Act, support a preference for using the price of an unsubsidized input, and that the Department should make adjustments for subsidies only when there is no price for unsubsidized inputs. *See*, *e.g.*, 130 Cong. Rec. S13970 (daily ed. Oct. 9, 1984) (statement of Sen. Dole). Although, as described above, we are revising our practice regarding the identification and measurement of a competitive benefit, the preference for using the price of unsubsidized inputs also was reflected in the Department's earlier practice. *See*, *e.g.*, *Agricultural Tillage Tools from Brazil*, 50 FR 24270, 24273 (1985).

In the hierarchy described above for selecting the price that the producer otherwise would pay for the input, we intend to use subsidized prices only when unsubsidized prices are not available. In determining whether a price is subsidized, we will rely primarily on CVD findings made by the United States or the investigating authorities of other countries in the recent past (*i.e.*, within the past five years).

One other clarification in paragraph (c) is that in determining whether there is a competitive benefit, the Department will adjust prices upward to account for delivery charges (*i.e.*, c.i.f.). Although the statute does not specify the precise basis for calculating a benchmark price for the input product, section 771A(b)(1) does require the use of the price that the manufacturer or producer of the subject merchandise ''would otherwise pay.'' In

our view, this requires the use of a price that represents a commercial alternative to the producer of the subject merchandise, and f.o.b. prices do not provide a measurement of the commercial alternative to the downstream producer. *See Non-Alloy Steel Pipe from Venezuela*, 57 FR at 42967 (1992).

Several outside parties commented on the upstream subsidies provision. One commenter argued that when using a world market price as a benchmark, the Department should rely upon an average of all publicly available export prices, including U.S. export prices. In response, several domestic parties argued that the world market price should equal the weighted-average landed price of the input product within the country under investigation. These commenters added that the price should also include all delivery expenses. Finally, other domestic parties suggested a hierarchy that would apparently not include any averaged prices from the world market, but instead would be limited to (1) actual prices paid by the producer of the subject merchandise to domestic or third-country suppliers, or (2) information regarding prices from such suppliers. We believe the above explanation adequately addresses the concerns raised by these comments.

Section 351.524

Section 351.524 deals with the calculation of the *ad valorem* subsidy rate and the attribution of a subsidy to a particular product. While § 351.524 is based roughly on § 355.47 of the 1989 Proposed Regulations, it contains changes that reflect further refinements in the Department's practice since 1989.

Paragraph (a) deals with the calculation of the *ad valorem* subsidy rate, and continues to provide that the Secretary will calculate the rate by dividing the amount of the subsidy benefit by the sales value of the product or products to which the subsidy is attributed. For example, if a firm receives an untied domestic subsidy for which the benefit is $100 and the firm's total sales were $1,000, the ad valorem subsidy rate would be 10 percent ($100 ÷ $1,000 = 10 percent).

The second and third sentences of paragraph (a) deal with the basis on which the Secretary will determine the sales value of a product. The Department's longstanding practice has been to determine sales value for products that are exported on an F.O.B. (port) basis in order to correspond to the basis on which the Customs Service assesses duties. However, in the *GIA*, the Department announced that it would begin using sales values as recorded in a firm's financial statements. The Department did so in the belief that this approach would be more accurate, would reduce the burden on the firms involved, and would allow the Department to account for the fact that shipping expenses might be subsidized. However, in order to ensure that the Customs Service collected the correct amount of duties based on an F.O.B. (port) basis, the Department found it necessary to adjust the calculated *ad valorem* subsidy rate based on a ratio of the invoice value of exports to the United States to the F.O.B. value of exports to the United States. In the end, only one of the respondents in the 1993 steel investigations had the information needed to calculate this ratio. Therefore, for all other firms in those cases, the Department wound up using its traditional F.O.B. (port) methodology.

Because the Department's experiment with a different basis was not successful, in the second sentence of paragraph (a) we have reverted to our standard practice of determining sales value on an F.O.B. (port) basis in the case of products that are exported. In the case of products that are sold for domestic consumption, we would determine sales value on an F.O.B. factory basis. While this method imposes a bit more work on firms than does a method that relies on booked values, we believe that the burden can be mitigated by relying on aggregate figures and reasonable allocations of those figures across markets (*e.g.*, subtracting total freight and insurance expenses, expenses that usually are maintained in ledgers that are separate from sales information).

In addition, there is no compelling reason for allocating subsidy benefits over sales values that include freight and other shipping costs. Although there may be rare instances where the ''shipping'' component of a transaction is subsidized, the Department can deal with those instances on a case-by-case basis. Accordingly, the third sentence of paragraph (a) provides that the Secretary may make appropriate adjustments to the *ad valorem* subsidy rate to account for ''shipping'' subsidies.

Paragraph (b) deals with the attribution of a subsidy to a particular product. Paragraphs (b)(2) through (b)(7) set forth general rules of attribution that the Secretary will apply to a given factual situation. We have taken this approach because, depending on the facts, several of the different rules may come into play at the same time. If we tried to account for all the possible permutations in advance, we would wind up with an extremely lengthy set of rules that might prove to be unduly rigid.

On the other hand, we appreciate that there needs to be a certain degree of predictability as to how the Department will attribute subsidies. We believe that the rules set forth in paragraph (b) are sufficiently precise so that parties can predict with a reasonable degree of certainty how the Department will attribute subsidies to particular products in a given factual scenario. In this regard, the Department's intent is to apply these rules in an harmonious manner.

With respect to the attribution rules themselves, they are consistent with the concept of ''benefit'' described in § 351.501, *i.e.*, that a benefit is conferred when a firm pays less than it otherwise would pay in the absence of the government-provided input or when a firm receives more revenue than it otherwise would earn. In light of this, subsidies should be attributed, to the extent possible, to those products for which costs are reduced (or revenues increased). *See, e.g.*, H.R. Rep. No. 317, 96th Cong., 1st Sess. 74–75 (1979) (''[W]ith regard to subsidies which provide an enterprise with capital equipment or a plant * * * the net amount of the subsidy should be * * * assessed in relation to the products produced with such equipment or plant. * * *.'').

This principle of attributing a subsidy to an affected cost (or revenue) center is embodied in the Department's longstanding practice concerning the ''tying'' of subsidies. *See*, *e.g.*, § 355.47 of the 1989 Proposed Regulations. As discussed below, there are various ways in which a subsidy can be tied. However, regardless of the method, the Department attributes a subsidy to the product or products to which it is tied. In this regard, one can view an ''untied'' subsidy as a subsidy that is tied to all products produced by a firm.

Paragraphs (b)(2) through (b)(7) set forth rules that the Department will apply to different types of tying situations. For example, paragraph (b)(2) contains an attribution rule regarding export subsidies. Because an export subsidy is, by definition, tied to the exportation, paragraph (b)(2) provides that the Secretary will attribute an export subsidy only to products exported by a firm.

As noted above, the Department intends to apply paragraphs (b)(2) through (b)(7) consistently with each other. As an example, assume that a government provides an export subsidy on exports of widgets to Country X. Here, three attribution rules come into

play. Under paragraph (b)(2), the subsidy would be attributed to products exported by a firm. Under paragraph (b)(4), the subsidy would be attributed to products sold by a firm to Country X. Under paragraph (b)(5), the subsidy would be attributed to widgets sold by a firm. Putting the three rules together, the subsidy in this example would be attributed to a firm's exports of widgets to Country X.

The rules set forth in paragraphs (b)(5) and (b)(6) warrant additional explanation because of the special nomenclature that is being used. In all other sections of these regulations, the term ''firm'' is used to describe the recipient of the subsidy. *See* § 351.102. However, for purposes of certain attribution rules, where we are describing how subsidies will be attributed within firms, ''firm'' is too broad. Therefore, for purposes of paragraphs (b)(5) and (b)(6), we are using the term ''corporation.'' In so doing, we are not intending to limit the application of these rules to firms that are organized as corporations. However, based on our experience, most of the firms we investigate are organized as corporations. Therefore, our use of the term ''corporation'' makes these attribution rules as clear as possible. If a respondent is not organized as a corporation, we will address any attribution issues covered by the rules in paragraphs (b)(5) and (b)(6) based on the facts of that case.

Paragraph (b)(5) sets out our rules regarding product tying. Paragraph (b)(5)(i) states our longstanding general rule that where a subsidy is tied to production of a particular product, the subsidy will be attributed to that product. Paragraph (b)(5)(ii) provides an exception to this general rule, which is also consistent with our past practice. Under this exception, if an input product is produced within the same corporation, subsidies tied to the input product will be attributed to sales of both the input and the downstream products. It is important to note that the Department intends to limit this exception to situations where production of the input and downstream product occur within the same corporation. If they are produced by companies that are separately incorporated—even if there is ''cross ownership'' between those separately incorporated companies (as discussed further below)—the Department will follow the general tying rule in paragraph (b)(5)(i). Consequently, petitioners alleging that subsidies to a separately incorporated input producer also benefit the downstream product should file their allegation in accordance with § 351.523(a) (upstream subsidies).

Paragraph (b)(6) deals with situations where cross ownership exists between corporations. For example, cross ownership exists where corporation A owns corporation B (or *vice versa*), or where A and B are both owned by corporation C. Cross ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross ownership will exist where there is a controlling ownership interest (*i.e.*, majority voting ownership) between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross ownership. Specifically, if the remaining shares are widely held, then a large minority voting interest interest would be sufficient to find cross ownership. (Situations where cross ownership exists by virtue of common government ownership are addressed further below.)

The term ''cross ownership'' as it is used here clearly differs from ''affiliation,'' as that term is defined in section 771(33) of the Act. ''Affiliation'' describes a wide range of business relationships, while cross ownership describes a much narrower range of relationships. In limiting our attribution rules to situations where there is cross ownership, we are not reading ''affiliated'' out of the CVD law. Indeed, we intend to include in our questionnaires a request for respondents to identify all affiliated parties. Also, persons affiliated with companies that shipped during the period of investigation will not be entitled to request a new shipper review under section 751(a)(2)(B) of the Act. However, we do not believe that affiliation alone provides a sufficient basis for attributing subsidies received by one corporation to products produced and sold by another affiliated corporation. Instead, we have chosen to focus on cross ownership, as described above, because where cross ownership exists one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. Where the interests of the two parties have merged to this degree, we believe it is reasonable to presume that subsidies to one corporation may also benefit another corporation. Paragraph (b)(6) reflects this. However, where cross ownership does not exist, we will not make this presumption. Nor do we intend to investigate subsidies to affiliated parties unless cross ownership exists or other information indicates that such subsidies may indeed benefit the merchandise being produced by the corporation being investigated.

Paragraph (b)(6) begins by stating a general rule, which is followed by three exceptions to that rule deriving from the presumption described above. Paragraph (b)(6)(i) states that the Secretary will normally attribute a subsidy received by a corporation to the products produced by that corporation. Hence, for example, if corporation A receives a subsidy, then that subsidy will normally be attributed to the production of corporation A.

However, under paragraph (b)(6)(ii), if two (or more) corporations with cross ownership produce the same merchandise, then subsidies received by either or both of those corporations will be attributed to the combined sales of the two corporations. Thus, for example, if corporation A and corporation B are both owned by corporation C and both A and B produce widgets, benefits to A and B will be combined to determine the subsidy and the subsidy will be attributed to the combined production of A and B.

Paragraph (b)(6)(iii) addresses a second instance where subsidies received by one corporation are attributed to sales of another corporation with cross ownership. This is where the subsidy is received by a holding company. Under paragraph (b)(6)(iii), such subsidies will normally be attributed to the consolidated sales of the holding company. However, if the Department determines that the holding company is merely serving as a conduit for government-provided funds to one (or more) of the holding company's subsidiaries, then the subsidy will be attributed to the production of that subsidiary. Analogous to this situation is the situation where a government provides a subsidy to a non-producing subsidiary (*e.g.*, a financial subsidiary) and there are no conditions on how the money is to be used. Consistent with our treatment of subsidies to holding companies, we would attribute a subsidy to a non-producing subsidiary to the consolidated sales of the corporate group that includes the non-producing subsidiary. *See Certain Steel from Belgium*, 58 FR 37273, 37282 (1993).

Finally, paragraph (b)(6)(iv) addresses situations where a corporation producing another product receives subsidies. In this instance, the Department will determine whether the corporation receiving the subsidy transfers it to the corporation producing the subject merchandise. For example, subsidies may be transferred between corporations with cross ownership through loans or other financial

transactions. However, as discussed above, where the subsidies are allegedly transferred through the purchase of inputs from an input supplier with cross ownership, that situation will be addressed under § 351.523 (upstream subsidies).

Although cross ownership is broadly defined, permitting us to include corporations under common government ownership, we expect that common government ownership will not normally be viewed as cross ownership. Instead, we intend to continue our longstanding practice of treating most government-owned corporations as the government itself, and not as corporations that transfer subsidies received from the government to other government-owned corporations through loans or other financial transactions. For example, where a government-owned corporation producing the product under investigation purchases electricity from a government-owned utility, a subsidy is conferred if the utility does not receive adequate remuneration. Nothing in paragraph (b)(6)(iv) is meant to require the Department to determine that the government-owned utility is receiving subsidies which it then transfers to the producer of the product under investigation. The situations where we would normally expect to treat common government ownership as cross ownership are: (1) Upstream subsidy allegations (*see* § 351.523(a)(1)(ii)(A)); (2) government-owned corporations producing the same product (*see* § 351.524(b)(6)(ii)); and (3) government-owned corporations producing different products (*see* § 351.524(b)(6)(iv)) where the corporations are under the control of the same ministry or within a corporate group containing producers of similar products.

Although the rules described in paragraphs (b)(2)–(b)(7) of § 351.524 deal with tying, § 351.524 does not contain a definition of ''tied.'' In the past, the Department has described this concept in a variety of ways. For example, in Appendix 2 to *Certain Steel Products from Belgium*, 47 FR 39304, 39317 (1982), the Department stated that ''a grant is 'tied' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy.'' In the preamble to the 1989 Proposed Regulations, 54 FR at 23374, the Department stated that a ''tied'' subsidy benefit is ''*e.g.*, a benefit bestowed specifically to promote the production of a particular product.''

Given the wide variety of factual scenarios that the Department has encountered in the past, and is likely to encounter in the future, we are reluctant to promulgate an all-encompassing definition of ''tied.'' Moreover, the absence of a definition of ''tied'' has not proven to be a problem in practice, and Annex IV to the SCM Agreement, which refers to ''tied'' subsidies in paragraph 3, also lacks a definition of this term. Therefore, for the present time, we intend to apply the term ''tied'' on a case-by-case basis. We would, however, welcome comments regarding what factors are relevant to the Department's determination of whether benefits are tied.

Virtually every comment submitted on attribution-related issues included a reference to the fungibility of money. Certain commenters argued that because money is fungible, the Department should not allow subsidies to be tied to particular products or to particular export markets. In their view, the only distinction that should be made is between export and domestic subsidies. Other commenters invoked the fungibility principle in support of their position that untied capital infusions to companies with multinational production should be attributed to worldwide sales of the firm.

While we agree with these commenters that money is fungible, we do not believe that the fungibility principle is useful for purposes of attributing subsidies. For example, according to the fungibility principle, there should be no distinction between export and domestic subsidies. Yet, this agency's consistent and non-controversial practice over the past 16 years has been to attribute export subsidies to exported products and domestic subsidies to all products sold. Over time, we also have adopted the practices of attributing: (1) Subsidies that can be tied to particular markets to products sold to those markets; (2) subsidies that can be tied to particular products to those products; (3) subsidies to companies with multinational production to production occurring in the jurisdiction of the subsidizing government; and (4) subsidies to corporate entities to the specific entities that receive the subsidies, absent a showing that the subsidies are transferred elsewhere within the corporate family. While we have characterized these as exceptions to the principle of the fungibility of money, the exceptions have become more prevalent than the rule insofar as attribution of subsidies is concerned. Therefore, while we do not reject fungibility, we do not believe that it should guide our attribution decisions.

This having been said, we would note that the rules we have proposed are entirely consistent with the court ruling most often cited in connection with the fungibility principle, *British Steel Corp.* v. *U.S.*, 605 F. Supp. 286, 293–96 (Ct. Int'l Trade 1985) (''*British Steel*''). In *British Steel*, the issue being addressed by the court was whether funds provided by the government to cover redundancy and closure costs of British Steel Corporation conferred a benefit on the company's ongoing production:

> In plaintiffs' view, funds provided to shut down excess capacity and eliminate unnecessary jobs are for purposes that are the very antithesis of ''manufacture, production or export,'' and thus are not countervailable under any circumstances.

Id. Commerce had taken a position contrary to this view, stating that the government's payments made ''the recipient more efficient and relieve[d] it of significant financial burdens.''

Presented with the same facts and arguments today, we would take the same position. The fact that the funds were given for the purpose of closing down facilities would not render the funds non-countervailable. This is because the costs that are affected when the government provides funds to close down facilities are the input costs of the ongoing operation, the operation that would bear those costs in the absence of the government payments. Hence, consistent with the attribution principles described above, those subsidies would properly be attributed to the ongoing production and sales of the recipient and not to the activities that had been closed down.

The court also addressed the Department's practice of attributing the benefit of untied subsidies (*i.e.*, the same redundancy and closure payments) to all merchandise produced by the recipient. Plaintiffs had characterized this practice as being based on the fungibility principle, and argued that application of the fungibility principle did not yield an accurate measure of the subsidy conferred on the subject merchandise. The court upheld Commerce's practice that untied subsidies benefit all products on a *pro rata* basis. This same practice is reflected in § 351.524(b)(3) of these regulations.

Therefore, we see the attribution rules we have proposed as being consistent with past practice, even where fungibility has been at issue. Moreover, we believe that these rules provide the best measure of the level of countervailable subsidies being conferred on the subject merchandise, because they match the subsidy with the

activity or cost center experiencing the cost saving (or revenue increase).

Regarding the attribution of capital infusions received by companies with multinational production, certain commenters urged the Department to return to its pre-1993 policy of treating such subsidies as benefitting all of the recipient's sales. Other commenters sought codification of the 1993 policy, which established a rebuttable presumption that domestic subsidies are tied to domestic production.

Section 351.524(b)(7) reflects our continued position, based upon our past administrative experience, that

> * * * the government of a country normally provides subsidies for the general purpose of promoting the economic and social health of that country and its people, and for the specific purposes of supporting, assisting or encouraging domestic manufacturing or production and related activities (including, for example, social policy activities such as the employment of its people).

GIA at 37231. Moreover, a government normally will not provide subsidies to firms that refuse to use them as the government wants, and firms receiving subsidies will not use them in a way that would contravene the government's purposes, as they otherwise risk losing future subsidies. Consistent with this, § 351.524(b)(7) states that we normally will attribute subsidies to merchandise produced within the jurisdiction of the granting authority. However, where a respondent can demonstrate that the subsidy is tied to foreign production, the subsidy will be attributed to merchandise produced by the foreign facility.

Although the proposed rule is similar to the practice the Department adopted in 1993, there are some differences. First, the rule is not stated as a rebuttable presumption. Instead of showing that subsidies are not tied to domestic production, respondents will instead have to demonstrate that the subsidies are tied to foreign production. We believe that this shift in emphasis will bring our practice with respect to multinational companies more in line with the other attribution rules that require evidence of tying, as opposed to evidence that a subsidy is not tied. Second, where a respondent can demonstrate that a subsidy is tied to foreign-produced merchandise, the subsidy will not be countervailable. *See* § 351.526 (transnational subsidies). This result is similar to the result under the practice adopted in 1993; *i.e.*, subsidies that were found not tied to domestic production were attributed to worldwide sales. By using worldwide sales, the CVD rate was reduced just as it will be reduced when subsidies are tied to foreign production and foreign production is not included in the denominator used to calculate the *ad valorem* CVD rate.

Finally, we note that nothing in paragraph (b)(7) is intended to imply that the Department is considering calculating regional subsidy rates; *i.e.*, different CVD rates for imports originating in different subnational jurisdictions.

Section 351.525

Section 351.525 deals with program-wide changes, and is almost identical to § 355.50 of the 1989 Proposed Regulations.

Section 351.526

Section 351.526 is based on § 355.44(o) of the 1989 Proposed Regulations, and provides that so-called ''transnational subsidies'' are not countervailable. Subsidies of this type include situations where (1) The government of one country provides foreign aid that ultimately is received by a firm located in the donee country, or (2) funds are provided by an international lending or development institution, such as the World Bank.

Section 355.44(o) contained a paragraph (o)(2) which essentially duplicated what is now section 701(d) of the Act, a provision that deals with subsidies to international consortia. In light of our decision to avoid regulations that merely repeat the statute, § 351.526 merely references, but does not repeat, section 701(d).

Section 351.527

Section 351.527 is based on § 355.46(b) of the 1989 Proposed Regulations, and provides that the Secretary will ignore the secondary tax consequences of a subsidy. For example, the Secretary would not reduce the benefit of a countervailable grant because the grant is treated as revenue for income tax purposes.

Classification

E.O. 12866

This proposed rule has been determined to be significant under E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if promulgated as final, would not have a significant economic impact on a substantial number of small entities. The Department does not believe that there will be any substantive effect on the outcome of AD and CVD proceedings as a result of the streamlining and simplification of their administration. With respect to the substantive amendments implementing the Uruguay Round Agreements Act, the Department believes that these regulations benefit both petitioners and respondents without favoring either, and, therefore, would not have a significant economic effects. As such, an initial regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This proposed rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act.

There are three separate collections of information contained in this rule. Each is currently approved by the Office of Management and Budget. The *Petition Format for Requesting Relief Under U.S. Antidumping Laws,* OMB Control No. 0625–0105, is estimated to impose an average public reporting burden of 40 hours. The information submitted is used to assess the petitioner's allegations of unfair trade practices and to determine whether an investigation is warranted. The information requested relates to the existence of sales at less than fair value and injury to the affected U.S. industry. Second, the *Format for Petition Requesting Relief Under the Countervailing Duty Law* is approved under OMB Control No. 0625–0148. This format is used to elicit the information required by the Tariff Act of 1930, as amended, and its implementing regulations, for the initiation of a countervailing duty investigation. Specifically, the *Format* requests information about the imported product, a description of the alleged subsidies to the imported product, and the extent to which the domestic industry is being injured by the imported product. Finally, OMB Control No. 0625–0200, *Antidumping and Countervailing Duties, Procedures for Initiation of Downstream Product Monitoring,* provides for the filing of a petition requesting the review of a ''downstream'' product. A downstream product is one that has incorporated as a component part, a part that is covered by a U.S. antidumping or countervailing duty finding. To be eligible to file a

petition, the petitioner must produce a product like the component part or the downstream product. It is estimated to require 15 hours per petition.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Commerce (see **ADDRESSES**) or to OMB Desk Officer, New Executive Office Building, Washington, DC. 20503.

E.O. 12612

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

List of Subjects in 19 CFR Part 351

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

Dated: February 18, 1997.

Robert S. LaRussa

Acting Assistant Secretary for Import Administration.

For the reasons stated, it is proposed that the proposed rule published at 61 FR 7308 on February 27, 1996, adding a new 19 CFR part 351, is further amended as follows:

PART 351—COUNTERVAILING AND ANTIDUMPING DUTIES

1. The authority citation for part 351 is proposed to continue to read as follows:

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

§ 351.102 [Amended]

2. Section 351.102 (Definitions) is amended by adding the following definitions in alphabetical order to read as follows:

* * * * *

Consumed in the production process. Inputs ''consumed in the production process'' are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product.

Cumulative indirect tax. ''Cumulative indirect tax'' means a multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

* * * * *

Direct tax. ''Direct tax'' means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.

* * * * *

Export insurance. ''Export insurance'' includes, but is not limited to, insurance against increases in the cost of exported products, nonpayment by the customer, inflation, or exchange rate risks.

Firm. For purposes of subpart E (Identification and Measurement of Countervailable Subsidies), ''firm'' means any individual, partnership, corporation, association, organization, or other entity, and is used to refer to the recipient of an alleged countervailable subsidy.

Government-provided. ''Government-provided'' is used as a shorthand expression to refer to an act or practice that is alleged to be a countervailable subsidy. The use of the term ''government-provided'' is not intended to preclude the possibility that a government may provide a countervailable subsidy indirectly in a manner described in section 771(5)(B)(iii) of the Act (indirect financial contribution).

Import charge. ''Import charge'' means a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax.

* * * * *

Indirect tax. ''Indirect tax'' means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.

Loan. ''Loan'' means a loan or other form of debt financing, such as a bond.

Long-term loan. ''Long-term loan'' means a loan, the terms of repayment for which are greater than one year.

* * * * *

Prior-stage indirect tax. ''Prior-stage indirect tax'' means an indirect tax levied on goods or services used directly or indirectly in making a product.

* * * * *

Short-term loan. ''Short-term loan'' means a loan, the terms of repayment for which are one year or less.

3. A new subpart E is added to 19 CFR part 351, to read as follows:

Subpart E—Identification and Measurement of Countervailable Subsidies

Sec.

Subpart E—Identification and Measurement of Countervailable Subsidies

§ 351.501 Scope.

The provisions of this subpart E set forth rules regarding the identification and measurement of countervailable subsidies. Where this subpart E does not expressly deal with a particular type of alleged subsidy, the Secretary will identify and measure the subsidy, if any, in accordance with the underlying principles of the Act and this subpart E.

§ 351.502 Specificity of domestic subsidies.

(a) *Agricultural subsidies.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector (domestic subsidy).

(b) *Subsidies to small- and medium-sized businesses.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to small firms or small- and medium-sized firms.

(c) *Disaster relief.* The Secretary will not regard disaster relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster.

§ 351.503 Grants.

(a) *Benefit.* In the case of a grant, a benefit exists in the amount of the grant.

(b) *Time of receipt of benefit.* In the case of a grant, the Secretary will consider a benefit as having been received as of the date on which the firm received the grant.

(c) *Allocation of benefit to a particular time period.*—(1) *Recurring grants.* The Secretary will allocate (expense) a recurring grant to the year in which the subsidy is received (*see* paragraph (b) of this section).

(2) *Non-recurring grants.*—(i) *In general.* The Secretary will allocate a non-recurring grant over the number of years corresponding to a firm's AUL (*see* paragraph (c)(4) of this section).

(ii) *Exception.* The Secretary will normally allocate (expense) non-recurring grants received under a particular subsidy program to the year in which the subsidies are received if the total amount of such grants is less than 0.50 percent of all sales of the firm in question during the same year, or, in the case of an export subsidy program, 0.50 percent of the export sales of the firm in question during the same year.

(3) *''Recurring'' versus ''non-recurring.''* The Secretary will consider a grant as ''non-recurring'' if the grant is exceptional in the sense that the recipient of the grant cannot expect to receive additional grants under the same subsidy program on an ongoing basis from year to year; or the government must approve the provision of the grant each year. If a grant does not satisfy the standard for a non-recurring grant under the preceding sentence, the Secretary will consider the grant as ''recurring.'

(4) *Process for allocating non-recurring grants over time.*—(i) *In general.* For purposes of allocating a non-recurring grant over time and determining the annual subsidy amount that should be assigned to a particular year, the Secretary will use the following formula:

$$A_k = \frac{y/n + [y - (y/n)(k-1)]d}{1+d}$$

Where

A_k=the amount of the benefit allocated to year k,

y=the face value of the grant (*see* paragraph (a) of this section,

n=the AUL (*see* paragraph (c)(4)(ii) of this section),

d=the discount rate (*see* paragraph (c)(4)(iii) of this section, and

k=the year of allocation, where the year of receipt=1 and $1 < k < n$.

(ii) *AUL.* The term ''AUL'' means the average useful life of a firm's productive assets. Normally, the Secretary will calculate a firm's AUL by dividing the average gross book value of the firm's depreciable productive fixed assets (for a period considered appropriate by the Secretary) by the firm's average annual charge to accumulated depreciation. In calculating a firm's AUL, the Secretary will attempt to exclude fixed assets that are not depreciable (*e.g.*, land or construction in progress) and assets that have been fully depreciated and are no longer in service. In addition, the Secretary may make a normalizing adjustment to account for such factors as an extraordinary write-down in the value of fixed assets or hyperinflation.

(iii) *Selection of a discount rate.*—(A) *In general.* The Secretary will select a discount rate based upon data for the year in which the government and the firm agreed on the terms for receiving the grant. The Secretary will use as a discount rate the following, in order of preference:

(1) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Secretary has determined to be countervailable subsidies;

(2) The average cost of long-term, fixed-rate loans in the country in question; or

(3) A rate that the Secretary considers to be most appropriate.

(B) *Exception for uncreditworthy firms.* In the case of a firm considered by the Secretary to be uncreditworthy (*see* § 351.504(a)(4)), the Secretary will use as a discount rate the interest rate described in § 351.504(a)(3)(iii).

§ 351.504 Loans.

(a) *Benefit.*—(1) *In general.* In the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market. *See* section 771(5)(E)(ii) of the Act. In making the comparison called for in the preceding sentence, the Secretary normally will rely on effective interest rates.

(2) *''Comparable commercial loan'' defined.*—(i) *''Comparable'' defined.* In selecting a loan that is ''comparable'' to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structures of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturities of the loans (*e.g.*, short-term v. long-term), and the currencies in which the loans are denominated.

(ii) *''Commercial'' defined.* In selecting a ''commercial'' loan, the Secretary normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. Also, the Secretary will treat a loan from a government-owned bank as a commercial loan, unless there is evidence that the loan from a government-owned bank is provided at the direction of the government or with funds provided by the government. However, the Secretary normally will not consider a loan provided under a government program to be a commercial loan for purposes of selecting a loan to compare to a government-provided loan.

(iii) *Long-term loans.* In selecting a comparable loan, if the government-provided loan is a long-term loan, the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established.

(iv) *Short-term loans.* In making the comparison required under paragraph (a)(1) of this section, if the government-provided loan is a short-term loan, the Secretary normally will use an annual average of the interest rates on comparable commercial loans during the period of investigation or review. However, if the Secretary finds that interest rates fluctuated significantly during the period of investigation or review, the Secretary will use the most appropriate interest rate based on the circumstances presented.

(3) *''Could Actually Obtain on the Market'' defined.*—(i) *In general.* In selecting a comparable commercial loan that the recipient ''could otherwise obtain on the market,'' the Secretary normally will rely on the actual experience of the firm in question in obtaining comparable commercial loans.

(ii) *Where the firm has no comparable commercial loans.* If the firm did not take out any comparable commercial loans during the period referred to in paragraph (a)(2)(iii) or (a)(2)(iv) of this section, the Secretary may use a national average interest rate for comparable commercial loans.

(iii) *Exception for uncreditworthy companies.* If the Secretary finds that a firm that received a government-provided long-term loan was uncreditworthy, as defined in paragraph (a)(4) of this section, the Secretary will calculate the interest rate to be used in making the comparison called for by paragraph (a)(1) of this section according to the following formula:

$$i_b = [(1+i_f)/0.957] - 1$$

Where

i_b=the benchmark interest rate for uncreditworthy companies;

i_f=the long-term interest rate that would be paid by creditworthy companies.

(4) *Uncreditworthiness defined.*—(i) *In general.* The Secretary will consider a firm to be uncreditworthy if the Secretary determines that, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. The Secretary will determine uncreditworthiness on a case-by-case basis, and may examine, among other factors, the following:

(A) The receipt by the firm of comparable commercial long-term loans;

(B) The present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts;

(C) The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

(D) Evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

(ii) *Significance of long-term commercial loans.* In the case of firms not owned by the government, the receipt by the firm of long-term commercial loans, unaccompanied by a government-provided guarantee, will constitute dispositive evidence that the firm is not uncreditworthy.

(iii) *Significance of prior subsidies.* In determining whether a firm is uncreditworthy, the Secretary will ignore current and prior subsidies received by the firm.

(iv) *Discount Rate.* When the creditworthiness of a firm is being considered in connection with the allocation of non-recurring grants (or benefits treated as non-recurring grants (*e.g.*, equity)), the Secretary will rely on information available in the year in which the government agrees to provide the grant.

(5) *Long-term variable rate loans.*—(i) *In general.* In the case of a long-term variable rate loan, the Secretary normally will make the comparison called for by paragraph (a)(1) of this section by relying on a comparable commercial loan with a variable interest rate. The Secretary then will compare the variable interest rates on the comparable commercial loan and the government-provided loan for the year in which the terms of the government-provided loan were established. If the comparison shows that the interest rate on the government-provided loan was equal to or higher than the interest rate on the comparable commercial loan, the Secretary will not consider the government-provided loan as having conferred a benefit. If the comparison shows that the interest rate on the government-provided loan was lower, the Secretary will consider the government-provided loan as having conferred a benefit, and, if the other criteria for a countervailable subsidy are satisfied, will calculate the amount of the benefit in accordance with paragraph (c)(4) of this section.

(ii) *Exception.* If the Secretary is unable to make the comparison described in paragraph (a)(5)(i) of this section, the Secretary may modify the method described in that paragraph.

(6) *Allegations.*—(i) *Allegation of uncreditworthiness required.* Normally, the Secretary will not consider the uncreditworthiness of a firm absent a specific allegation by the petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy.

(ii) *Government-owned banks.* The Secretary will not investigate a loan provided by a government-owned commercial bank absent a specific allegation that is supported by information establishing a reasonable basis to believe or suspect that:

(A) The government-owned bank provided the loan at the direction of the government or with funds provided by the government; and

(B) A benefit exists within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of loans described in paragraphs (c)(1), (c)(2), and (c)(4) of this section, the Secretary normally will consider a benefit as having been received as of the date on which the firm is due to make a payment on the government-provided loan. In the case of a loan described in paragraph (c)(3) of this section, the Secretary normally will consider the benefit as having been received in the year in which the firm receives the proceeds of the loan.

(c) *Allocation of benefit to a particular time period.*—(1) *Short-term loans.* The Secretary will allocate (expense) the benefit from a short-term loan to the year(s) in which the firm is due to make interest payments on the loan.

(2) *Long-term fixed-rate loans with concessionary interest rates.* Except as provided in paragraph (c)(3) of this section, the Secretary normally will calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year; *i.e.*, the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(3) *Long-term fixed-rate loans with different repayment schedules.*—(i) *Calculation of present value of benefit.* Where the government-provided loan and the loan to which it is compared under paragraph (a) of this section are both long-term, fixed-interest rate loans, but have different grace periods or maturities, or where the shapes of the repayment schedules differ, the Secretary will determine the total benefit by calculating the present value, in the year in which the loan was received, of the difference between the amount that the firm is to pay on the government-provided loan and the amount that the firm would have paid on the comparison loan. In no event may the total benefit calculated under the preceding sentence exceed the principal of the loan.

(ii) *Calculation of annual benefit.* With respect to the benefit calculated under paragraph (c)(3)(i) of this section, the Secretary will determine the portion of that benefit to be assigned to a particular year by using the formula set forth in § 351.503(c)(4)(i) (grants) and the following parameters:

A_k=the amount countervailed in year k,
y=the present value of the benefit (*see* paragraph (c)(3)(i) of this section),
n=the number of years in the life of the loan,
d=the interest rate on the comparison loan selected under paragraph (a) of this section, and
k=the year of allocation, where the year of receipt=1.

(4) *Long-term variable interest rate loans.* In the case of a government-provided long-term variable-rate loan, the Secretary normally will determine the amount of the benefit attributable to a particular year by calculating the difference in payments for that year; *i.e.*, the difference between the amount paid by the firm in that year on the government-provided loan and the amount the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(d) *Contingent liability interest-free loans.* In the case of a long-term, interest-free loan, the obligation for repayment of which is contingent upon subsequent events, the Secretary

normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a)(4), (b), and (c)(1) of this section.

§ 351.505 Loan guarantees.

(a) *Benefit.*—(1) *In general.* In the case of a loan guarantee, a benefit exists to the extent that the amount a firm pays on the loan with the government-provided guarantee is less than the amount the firm would pay on a comparable commercial loan absent the government-provided guarantee, after adjusting for any difference in guarantee fees. *See* section 771(5)(E)(iii) of the Act. The Secretary will select a comparable commercial loan in accordance with § 351.504(a) (loans).

(2) *Government acting as owner.* In situations where a government, acting as the owner of a firm, provides a loan guarantee to that firm, the guarantee does not confer a benefit if the Secretary finds that it is a normal commercial practice in the country in question for shareholders to provide guarantees to their firms under similar circumstances and on comparable terms.

(b) *Time of receipt of benefit.* In the case of a loan guarantee, the Secretary normally will consider a benefit as having been received as of the date on which the firm is due to make a payment on the loan subject to the government-provided loan guarantee.

(c) *Allocation of benefit to a particular time period.* In allocating the benefit from a government-provided loan guarantee to a particular time period, the Secretary will use the methods set forth in § 351.504(c) regarding loans.

§ 351.506 Equity.

(a) *Benefit.*—(1) *In general.* In the case of a government-provided equity infusion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See* section 771(5)(E)(i) of the Act. In determining whether an investment decision is inconsistent with usual investment practice, the Secretary normally will compare the price paid by the government for the equity it purchased to the price that a private investor in the country would pay for the same (or similar) form of equity.

(2) *Private investor prices available.* (i) *In general.* The Secretary will consider an equity infusion as being inconsistent with usual investment practice (*see* paragraph (a)(1) of this section) if the price paid by the government for newly-issued equity is greater than, in order of preference:

(A) The price paid by private investors for the same (or similar) form of newly-issued equity; or

(B) The publicly-traded market price for previously issued equity of the same (or similar) form as the newly-issued equity.

(ii) *Timing of private investor prices.* In selecting a private investor price under paragraph (a)(2)(i) of this section, the Secretary will rely on sales of equity made at such time as, in the Secretary's judgment, permits a reasonable comparison to the newly-issued equity purchased by the government.

(iii) *Significant private sector participation required.* The Secretary will not use private investor prices under paragraph (a)(2)(i) of this section if the Secretary concludes that private investor purchases of newly-issued equity, or private investor trading in previously issued equity, is not significant.

(iv) *Adjustments for ''similar'' form of equity.* Where the Secretary uses private investor prices for a form of equity that is similar to the newly-issued equity purchased by the government (*see* paragraph (a)(2)(i) of this section), the Secretary, where appropriate, will adjust the prices to reflect the differences in the forms of equity.

(3) *Private investor prices unavailable.* If private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm that received the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion (*see* paragraph (a)(4) of this section). If the Secretary determines that the firm was equityworthy, the Secretary will apply paragraph (a)(5) of this section to determine whether the equity infusion was inconsistent with the usual investment practice of private investors. A determination by the Secretary that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with usual investment practice of private investors, and the Secretary will apply paragraph (a)(6) of this section to measure the benefit, if any, attributable to the equity infusion.

(4) *Equityworthiness.*—(i) *In general.* The Secretary will consider a firm to have been equityworthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. In making this determination, the Secretary may examine the following factors, among others:

(A) Current and past indicators of the firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

(B) Future financial prospects of the firm, including market studies, economic forecasts, and project or loan appraisals prepared at the time of, or prior to, the government-provided equity infusion in question;

(C) Rates of return on equity in the three years prior to the government equity infusion; and

(D) Equity investment in the firm by private investors.

(ii) *Significance of prior subsidies.* In determining whether a firm was equityworthy, the Secretary will ignore current and prior subsidies received by the firm.

(5) *Benefit to equityworthy firm.* If the Secretary determines that a firm was equityworthy, the Secretary will examine the details of the particular equity infusion in question to determine whether the investment was inconsistent with usual investment practice of private investors. If the Secretary determines that the investment was inconsistent with usual investment practice, the Secretary will determine the amount of the benefit conferred on a case-by-case basis.

(6) *Benefit to unequityworthy firm.*—(i) *Constructed private investor price.* If the Secretary determines that a firm was unequityworthy, the Secretary normally will measure the benefit conferred by a government-provided equity infusion by estimating, based on information and analysis available at the time of the equity infusion, the price that a reasonable private investor would have paid for the equity purchased by the government. If the price paid by the government for newly-issued equity was greater than this price, the benefit will be based on the difference between the two prices.

(ii) *Constructed private investor price unavailable.* If the Secretary determines that information is not available, or does not provide an appropriate basis, for calculating the price that a reasonable private investor would have paid (*see* paragraph (a)(6)(i) of this section), the Secretary will measure the benefit conferred by an equity infusion in an unequityworthy firm by adjusting the amount of the infusion allocated to a particular year under paragraph (c)(3) of this section by the amount of

subsequent after-tax returns achieved in that year.

(7) *Allegations.* The Secretary will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that the firm received an equity infusion that provides a countervailable benefit within the meaning of paragraph (a) of this section.

(b) *Time of receipt of benefit.* In the case of a government-provided equity infusion, the Secretary normally will consider the benefit to have been received as of the date on which the firm received the equity infusion.

(c) *Allocation of benefit to a particular time period.*—(1) *In general.* The benefit conferred by an equity infusion shall be allocated over the same time period as a non-recurring grant. *See* § 351.503(c)(2).

(2) *Allocation where private investor prices used.* Where the Secretary determines the amount of the benefit conferred by an equity infusion by using private investor prices (*see* paragraph (a)(2) of this section) or the price that a reasonable private investor would have paid (*see* paragraph (a)(6)(i) of this section), the Secretary will allocate the benefit as if it were a non-recurring grant (*see* § 351.503(c)(2)).

(3) *Allocation where private investor prices not used.* Where the Secretary is unable to use private investor prices (*see* paragraph (a)(2) of this section) or the price that a reasonable private investor would have paid (*see* paragraph (a)(6)(i) of this section), the Secretary will allocate the full amount of the equity infusion as if it were a non-recurring grant (*see* § 351.503(c)(2)). The amount so allocated to a particular year will be subject to adjustment under paragraph (a)(6)(ii) of this section.

§ 351.507 Debt forgiveness.

(a) *Benefit.* In the case of an assumption or forgiveness of a firm's debt obligation, a benefit exists equal to the amount of the principal and/or interest (including accrued, unpaid interest) that the government has assumed or forgiven. In situations where the entity assuming or forgiving the debt receives shares in a firm in return eliminating or reducing the firm's debt obligation, the Secretary will determine the existence of a benefit under § 351.506 (equity infusions).

(b) *Time of receipt of benefit.* In the case of a debt or interest assumption or forgiveness, the Secretary normally will consider the benefit as having been received as of the date on which the debt or interest was assumed or forgiven.

(c) *Allocation of benefit to a particular time period.*—(i) *In general.* The Secretary will treat the benefit determined under paragraph (a) of this section as a non-recurring grant, and will allocate the benefit to a particular year in accordance with § 351.503(c)(2)(grants).

(ii) *Exception.* Where an interest assumption is tied to a particular loan and where a firm can reasonably expect to receive the interest assumption at the time it applies for the loan, the Secretary will normally treat the interest assumption as a reduced-interest loan and allocate the benefit to a particular year in accordance with § 351.504(c)(loans).

§ 351.508 Direct taxes.

(a) *Benefit.*—(1) *Exemption or remission of taxes.* In the case of a program that provides for a full or partial exemption or remission of a direct tax (*e.g.,* an income tax), or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program that provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of direct taxes will be treated as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.504.

(b) *Time of receipt of benefit.* In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received as of the date on which the recipient firm became capable of calculating the amount of the benefit. Normally, this date will be the date on which the firm filed its tax return. In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit as having been received as of the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral of a direct tax to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.509 Indirect taxes and import charges (other than export programs).

(a) *Benefit.*—(1) *Exemption or remission of taxes.* In the case of a program, other than an export program, that provides for the full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program, other than an export program, that provides for a deferral of indirect taxes or import charges, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of indirect taxes or import charges will be treated as a government-provided loan in the amount of the taxes deferred, according to the methodology described in § 351.504.

(b) *Time of receipt of benefit.* In the case of a full or partial exemption or remission of an indirect tax or import charge, the Secretary normally will consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge. In the case of the deferral of an indirect tax or import charge of one year or less, the Secretary normally will consider the benefit as having been received as of the date the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral described in paragraph (a) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.510 Provision of goods or services.

(a) *Benefit.* [Reserved]

(b) *Time of receipt of benefit.* In the case of the provision of a good or service, the Secretary normally will consider a benefit as having been received as of the date on which the firm pays, or in the absence of payment was due to pay, for the government-provided good or service.

(c) *Allocation of benefit to a particular time period.* In the case of the provision of a good or service, the Secretary will allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.511 Purchase of goods. [Reserved]

§ 351.512 Worker-related subsidies.

(a) *Benefit.* In the case of a program that provides assistance to workers, a benefit exists to the extent that the assistance relieves a firm of an obligation that it normally would incur.

(b) *Time of receipt of benefit.* In the case of assistance provided to workers, the Secretary normally will consider the benefit as having been received by the firm as of the date on which the payment is made that relieves the firm of the relevant obligation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from assistance provided to workers to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.513 Export subsidies.

The Secretary will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon actual or anticipated exportation or export earnings. In applying this section, the Secretary will consider a subsidy to be contingent upon actual or anticipated exportation or export earnings if receipt of the subsidy is, in law or in fact, tied to actual or anticipated export performance, alone or as one of two or more factors.

§ 351.514 Internal transport and freight charges for export shipments.

(a) *Benefit.*—(1) *In general.* In the case of internal transport and freight charges on export shipments, a benefit exists to the extent that the charges paid by a firm for transport or freight with respect to goods destined for export are less than what the firm would have paid if the goods were destined for domestic consumption. The Secretary will consider the amount of the benefit to equal the difference in amounts paid.

(2) *Exception.* For purposes of paragraph (a)(1) of this section, a benefit does not exist if the Secretary determines that:

(i) Any difference in charges is the result of an arm's length transaction between the supplier and the user of the transport or freight service; or

(ii) The difference in charges is commercially justified.

(b) *Time of receipt of benefit.* In the case of internal transport and freight charges for export shipments, the Secretary normally will consider the benefit as having been received by the firm as of the date on which the firm paid, or in the absence of payment was due to pay, the charges.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from internal transport and freight charges for export shipments to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.515 Price preferences for inputs used in the production of goods for export.

(a) *Benefit.* (1) *In general.* In the case of the provision by governments or their agencies, either directly or indirectly through government-mandated schemes, of imported or domestic products for use in the production of exported goods, a benefit exists to the extent that the Secretary determines that the terms or conditions on which the products are provided are more favorable than the terms or conditions applicable to the provision of like or directly competitive products for use in the production of goods for domestic consumption. The amount of the benefit will equal the difference between the amount that a firm paid for inputs used in the production of export products and the amount the firm would have paid for like or directly competitive products for use in the production of goods for domestic consumption.

(2) *Exception.* A benefit will not exist under paragraph (a)(1) of this section if the Secretary determines that the terms or conditions relating to the provision of products for use in the production of exported goods are not more favorable than those commercially available on world markets to exporters in the country in question. For purposes of the preceding sentence, the Secretary normally will compare the price charged for the domestically sourced input to the delivered price of the imported input in order to determine whether the domestically sourced input is being provided on more favorable terms or conditions than those available on world markets.

(3) *Commercially available.* For purposes of paragraph (a)(2) of this section, ''commercially available'' means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(b) *Time of receipt of benefit.* In the case of a benefit described in paragraph (a)(1) of this section, the Secretary normally will consider the benefit to have been received as of the date on which the firm paid, or in the absence of payment was due to pay, for the product.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) benefits described in paragraph (a)(1) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.516 Remission upon export of indirect taxes.

(a) *Benefit.* In the case of the remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

(b) *Time of receipt of benefit.* In the case of the remission upon export of an indirect tax, the Secretary will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from the remission upon export of indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.517 Exemption, remission or deferral upon export of prior-stage cumulative indirect taxes.

(a) *Benefit.*—(1) *Exemption of prior-stage cumulative indirect taxes.* In the case of a program that provides for the exemption of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the exemption of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the prior-stage cumulative indirect taxes that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste.

(2) *Remission of prior-stage cumulative indirect taxes.* In the case of a program that provides for the remission of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the amount remitted exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the remission of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the

amount of the benefit to be the difference between the amount remitted and the amount of the prior-stage cumulative indirect taxes on inputs that are consumed in the production of the export product, making normal allowance for waste. Notwithstanding the preceding sentence, the Secretary will consider the entire amount of the remittance to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, where the system or procedure is not reasonable, or where the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product.

(3) *Deferral of prior-stage cumulative indirect taxes.* In the case of a program that provides for a deferral of prior-stage cumulative indirect taxes on an exported product, a benefit does not exist if the government charges appropriate interest on the taxes deferred. If the Secretary determines that a benefit exists, the Secretary normally will treat the deferral as if it were a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.504.

(b) *Time of receipt of benefit.* In the case of the exemption, remission, or deferral of prior-stage cumulative indirect taxes, the Secretary normally will consider the benefit as having been received:

(1) In the case of an exemption, as of the date of exportation;

(2) In the case of a remission, as of the date of exportation;

(3) In the case of a deferral of one year or less, as of the date on which the deferred tax was due; and

(4) In the case of a multi-year deferral, as of the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of the exemption, remission, or deferral of prior-stage cumulative indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.518 Remission or drawback of import charges upon export.

(a) *Benefit.*—(1) *In general.* In the case of the remission or drawback of import charges upon export, a benefit exists to the extent that the Secretary determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs consumed in the production of the exported product, making normal allowances for waste.

(2) *Substitution drawback.* ''Substitution drawback'' involves a situation in which a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. Substitution drawback does not necessarily result in the conferral of a benefit. However, a benefit exists if the Secretary determines that:

(i) The import and the corresponding export operations both did not occur within a reasonable time period, not to exceed two years; or

(ii) The amount drawnback exceeds the amount of the import charges levied initially on the imported inputs for which drawback is claimed.

(3) *Amount of the benefit from remission or drawback*—(i) *In general.* If the Secretary determines that the remission or drawback, including substitution drawback, of import charges confers a benefit under paragraph (a)(1) or (a)(2) of this section, the Secretary normally will consider the amount of the benefit to be the difference between the amount of import charges remitted or drawnback and the amount levied initially on the imported inputs for which remission or drawback was claimed.

(ii) *Exception.* Notwithstanding paragraph (a)(3)(i) of this section, the Secretary will consider the entire amount of a remission or drawback to confer a benefit, unless the Secretary determines that:

(A) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(B) If the government in question does not have a system or procedure in place, where the system or procedure is not reasonable, or where the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product.

(b) *Time of receipt of benefit.* In the case of the remission or drawback of import charges, the Secretary normally will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of the remission or drawback of import charges to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.519 Export insurance.

(a) *Benefit*—(1) *In general.* In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.

(2) *Amount of the benefit.* If the Secretary determines under paragraph (a)(1) of this section that premium rates are inadequate, the Secretary normally will calculate the amount of the benefit as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the period of investigation or review.

(b) *Time of receipt of benefit.* In the case of export insurance, the Secretary normally will consider the benefit as having been received in the year in which the difference described in paragraph (a)(2) of this section occurs.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from export insurance to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.520 General export promotion.

In the case of export promotion activities of a government, a benefit does not exist if the Secretary determines that the activities consist of general informational activities that do not promote particular products over others.

§ 351.521 Import substitution subsidies. [Reserved]

§ 351.522 Certain agricultural subsidies.

The Secretary will treat as noncountervailable domestic support measures that are provided to certain agricultural products (*i.e.*, products listed in Annex 1 of the WTO

Agreement on Agriculture) and that the Secretary determines conform to the criteria of Annex 2 of the WTO Agreement on Agriculture. *See* section 771(5B)(F) of the Act. The Secretary will determine that a particular domestic support measure conforms fully to the provisions of Annex 2 if the Secretary finds that the measure:

(a) Is provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers;

(b) Does not have the effect of providing price support to producers; and

(c) Meets the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of Annex 2.

§ 351.523 Upstream subsidies.

(a) *Investigation of upstream subsidies*—(1) *In general.* Before investigating the existence of an upstream subsidy (*see* section 771A of the Act), the Secretary must have a reasonable basis to believe or suspect that all of the following elements exist:

(i) A countervailable subsidy, other than an export subsidy, is provided with respect to an input product;

(ii) One of the following conditions exist:

(A) There is cross ownership between the supplier of the input product and the producer of the subject merchandise;

(B) The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's length transaction for an unsubsidized input product; or

(C) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the subject merchandise; and

(iii) The *ad valorem* countervailable subsidy rate on the input product, multiplied by the proportion of the total production costs of the subject merchandise accounted for by the input product, is equal to, or greater than, one percent.

(b) *Input product.* For purposes of this section, ''input product'' means any product used in the production of the subject merchandise.

(c) *Competitive benefit*—(1) *In general.* In evaluating whether a competitive benefit exists under section 771A(b) of the Act, the Secretary will determine whether the price for the subsidized input product is lower than the benchmark input price. For purposes of this section, the Secretary will use as a benchmark input price the following, in order of preference:

(i) The actual price paid by, or offered to, the producer of the subject merchandise for an unsubsidized input product, including an imported input product;

(ii) An average price for an unsubsidized input product, including an imported input product, based upon publicly available data;

(iii) The actual price paid by, or offered to, the producer of the subject merchandise for a subsidized input product, including an imported input product, that is adjusted to account for the countervailable subsidy;

(iv) An average price for a subsidized input product, including an imported input product, based upon publicly available data, that is adjusted to account for the countervailable subsidy; or

(v) An unadjusted price for a subsidized input product.

(2) *Use of delivered prices.* The Secretary will use a delivered (*e.g.,* c.i.f.) price whenever the Secretary uses the price of an imported input product under paragraph (c)(1) of this section.

(d) *Significant effect*—(1) *Presumptions.* In evaluating whether an upstream subsidy has a significant effect on the cost of manufacturing or producing the subject merchandise (*see* section 771A(a)(3) of the Act), the Secretary will multiply the *ad valorem* countervailable subsidy rate on the input product by the proportion of the total production cost of the subject merchandise that is accounted for by the input product. If the product of that multiplication exceeds five percent, the Secretary will presume the existence of a significant effect. If the product is less than one percent, the Secretary will presume the absence of a significant effect. If the product is between one and five percent, there will be no presumption.

(2) *Rebuttal of presumptions.* A party to the proceeding may present information to rebut these presumptions. In evaluating such information, the Secretary will consider the extent to which factors other than price, such as quality differences, are important determinants of demand for the subject merchandise.

§ 351.524 Calculation of ad valorem subsidy rate and attribution of subsidy to a product.

(a) *Calculation of ad valorem subsidy rate.* The Secretary will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product to which the Secretary attributes the subsidy under paragraph (b) of this section. Normally, the Secretary will determine the sales value of a product on an F.O.B. (port) basis (if the product is exported) or on an F.O.B. (factory) basis (if the product is sold for domestic consumption). However, if the Secretary determines that countervailable subsidies are provided with respect to the movement of a product from the port or factory to the place of destination (*e.g.,* freight or insurance costs are subsidized), the Secretary may make appropriate adjustments to the *ad valorem* subsidy rate to account for such subsidies.

(b) *Attribution of a subsidy to a product*—(1) *In general.* In attributing a subsidy to one or more products, the Secretary will apply the rules set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Export subsidies.* The Secretary will attribute an export subsidy only to products exported by a firm.

(3) *Domestic subsidies and import substitution subsidies.* The Secretary will attribute a domestic subsidy or an import substitution subsidy to all products sold by a firm, including products that are exported.

(4) *Subsidies tied to a particular market.* If a subsidy is tied to sales to a particular market, the Secretary will attribute the subsidy only to products sold by the firm to that market.

(5) *Subsidies tied to a particular product.*—(i) *In general.* If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.

(ii) *Exception.* If a subsidy is tied to the production or sale of an input product produced within the same corporation that produces the downstream product, then a subsidy which is tied to the input product will be attributed to the input and downstream products produced by that corporation.

(6) *Corporations with Cross Ownership.*—(i) *In general.* The Secretary normally will attribute a subsidy to the products produced by the corporation that received the subsidy.

(ii) *Corporations producing the same product.* If two (or more) corporations with cross ownership produce the same product, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations.

(iii) *Holding companies.* If the firm that received a subsidy is a holding company, the Secretary will attribute the subsidy to the consolidated sales of the holding company. However, if the

Secretary finds that the holding company merely served as a conduit for the transfer of the subsidy from the government to a subsidiary of the holding company, the Secretary will attribute the subsidy to products sold by the subsidiary.

(iv) *Transfer of subsidy between corporations with cross ownership producing different products.* If a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross ownership, the Secretary will attribute the subsidy to products sold by the recipient of the transferred subsidy.

(7) *Multinational firms.* If the firm that received a subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the jurisdiction of the government that granted the subsidy. However, if the subsidy is tied to production by a facility outside of that jurisdiction, the Secretary will attribute the subsidy to products produced by that facility.

§ 351.525 Program-wide changes.

(a) *In general.* The Secretary may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if:

(1) The Secretary determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation (*see* § 351.205) or a preliminary results of an administrative review or a new shipper review (*see* §§ 351.213 and 351.214), a program-wide change has occurred; and

(2) The Secretary is able to measure the change in the amount of countervailable subsidies provided under the program in question.

(b) *Definition of program-wide change.* For purposes of this section, ''program-wide change'' means a change that:

(1) Is not limited to an individual firm or firms; and

(2) Is effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.

(c) *Effect limited to cash deposit rate.*—(1) *In general.* The application of paragraph (a) of this section will not result in changing an affirmative determination to a negative determination or a negative determination to an affirmative determination.

(2) *Example.* In a countervailing duty investigation, the Secretary determines that during the period of investigation a countervailable subsidy existed in the amount of 10 percent *ad valorem*. Subsequent to the period of investigation, but before the preliminary determination, the foreign government in question enacts a change to the program that reduces the amount of the subsidy to a *de minimis* level. In a final determination, the Secretary would issue an affirmative determination, but would establish a cash deposit rate of zero.

(d) *Terminated programs.* The Secretary will not adjust the cash deposit rate under paragraph (a) of this section if the program-wide change consists of the termination of a program and:

(1) The Secretary determines that residual benefits may continue to be bestowed under the terminated program; or

(2) The Secretary determines that a substitute program for the terminated program has been introduced and the Secretary is not able to measure the amount of countervailable subsidies provided under the substitute program.

§ 351.526 Transnational subsidies.

Except as otherwise provided in section 701(d) of the Act (subsidies provided to international consortia), a subsidy does not exist if the Secretary determines that the funding for the subsidy is provided:

(a) By a government of a country other than the country in which the recipient firm is located, or

(b) By an international lending or development institution.

§ 351.527 Tax consequences of benefits.

In calculating the amount of a benefit, the Secretary will not consider the secondary tax consequences of the benefit.

[FR Doc. 97–4538 Filed 2–25–97; 8:45 am]
BILLING CODE 3510–25–P

Federal Register

Wednesday
February 26, 1997

Part III

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals; February 1, 1997

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of February 1, 1997, of seven deferrals contained in the first special message for FY 1997. This message was transmitted to Congress on December 4, 1996.

Rescissions

As of February 1, 1997, no rescission proposals had been transmitted to the Congress.

Deferrals (Attachments A and B)

As of January 1, 1997, $3,486 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1997.

Information From Special Messages

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report is printed in the editions of the Federal Register cited below:

61 FR 66172, Monday, December 16, 1996

Franklin D. Raines,

Director.

Attachments

ATTACHMENT A.—STATUS OF FY 1997 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	3,544.3
Routine Executive releases through January 1, 1997 (OMB/Agency releases of $58.3 million.)	−58.3
Overturned by the Congress.	
Currently before the Congress	3,486.0

BILLING CODE 3110–01–P

[FR Doc. 97–4720 Filed 2–25–97; 8:45 am]
BILLING CODE 3110–01–C

ATTACHMENT B
Status of FY 1997 Deferrals - As of February 1, 1997
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2-1-97
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D97-1	1,258,292		12-4-96	200				1,258,092
Foreign military financing program	D97-2	1,412,375		12-4-96					1,412,375
Foreign military financing loan program	D97-3	60,000		12-4-96					60,000
Foreign military financing direct loan financing account	D97-4	540,000		12-4-96					540,000
Agency for International Development									
International disaster assistance, Executive	D97-5	147,800		12-4-96	5,090				142,710
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D97-6	118,486		12-4-96	53,000				65,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D97-7	7,365		12-4-96					7,365
TOTAL, DEFERRALS		**3,544,318**	**0**		**58,290**			**0**	**3,486,028**

Federal Register

Wednesday
February 26, 1997

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, et al.

Special Flight Rules in the Vicinity of Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; Amendment Nos. 91–253, 93–73, 121–262, 135–66]

RIN 2120–AF93

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: On December 31, 1996, the FAA published a final rule that codifies the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modifies the dimensions of the GCNP Special Flight Rules Area; establishes new and modifies existing flight-free zones; establishes new and modifies existing flight corridors; establishes reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area; prohibits commercial sightseeing operations during certain time periods; and limits the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. This action delays the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the final rule and reinstates portions of and amends the expiration date of SFAR No. 50–2. This action does not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or the other portions of the rule.

DATES: Effective date: The effective date of May 1, 1997, for 14 CFR Sections 93.301, 93.305, and 93.307, is delayed until 0901 UTC January 31, 1998. SFAR No. 560–2 is reinstated and amended effective 0901 UTC May 1, 1997. SFAR No. 50–2, Sections 2, 3, 6, 6, 7 and 8 are removed effective 0901 UTC May 1, 1997.

Comments must be received on or before March 24, 1997.

ADDRESSES: Comments should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be sent electronically to the Rules Docket by using the following Internet address nprmcmts@mail.faa.dot.gov. Comments must be marked Docket No. 28537. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Saunders, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

History

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking [NPRM], and a Notice of Availability of Proposed Commercial Air Tour Routes) in the Federal Register (62 FR 69301) as part of an overall strategy to reduce further the impact of aircraft noise on the park environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amends part 93 of the Federal Aviation Regulations and adds a new subpart to codify the provisions of SFAR No. 50–2, modifies the dimensions of the GCNP Special Flight Rules Area; establishes new and modifies existing flight-free zones; reestablishes new and modifies existing flight corridors; and establishes reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibits commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and places a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. These provisions become effective on May 1, 1997.

An NPRM, Notice No. 96–15, proposing to establish noise limitations for certain aircraft operating in the vicinity of GCNP was also published with a comment period that closes on March 31, 1997.

Finally, a Notice of Availability of proposed Commercial Air Tour Routes for the GCNP was published with a 30-day comment period that closed on January 31, 1997. This Notice requested comment on the proposed new or modified existing air tour routes, which complement the final rule affecting the Special Flight Rules in the Vicinity of GCNP.

Petitions

By petition dated January 15, 1997, the Aircraft Owners and Pilots Association requested that the FAA reconsider the rule because of its perceived negative impact on the general aviation community and the fact that general aviation traffic does not contribute to the issues addressed by the final rule.

On January 30, 1997, the Clark County Department of Aviation, et al., filed a petition seeking reconsideration and/or a stay of effectiveness of the implementation of the Toroweap/Shinumo Flight-Free Zone that will bar the use of the current ''Blue 1'' commercial air tour route until the FAA has taken adequate steps to assure the availability of an adequate alternative for Las Vegas based air tour operators.

On January 31, 1997, the Grand Canyon Air Tour Coalition (Coalition) requested a stay of the effective date arguing that the necessary pilot training and certification could not be reasonably and safely completed prior to the May 1, 1997, effective date. The petition also alleged that discontinuing and limiting existing tour routes as of May 1, 1997, would disrupt the travel plans of a substantial portion of GCNP visitors, and air tour operators would be forced to dishonor contractual obligations based on material printed prior to August 1996. (This administrative action is separate from but interrelated to a Petition for Review filed by the Coalition in the Court of Appeals for the District of Columbia Circuit, *Grand Canyon Air Tour Coalition* v. *FAA,* (Case No. 97–1003)).

On February 18, 1997, the Grand Canyon Trust, et. al., (Trust) filed a request with the FAA opposing the Coalition's request for stay of the final rule and urged the FAA to deny the Coalition's request. The Trust argued that the Coalition has not presented valid grounds to support its stay request.

Even though the specific Petitions filed with the FAA focus on different aspects of the operating environment within the Park, the underlying concepts of the three Petitions are similar in nature. All three administrative Petitions are concerned

with the air tour route structure or its implementation.

In support of the requests for a stay of the effective date, the Petitions have alleged several economic and safety concerns. The economic concerns are inextricably tied with the implementation of the new routes in the Park. As will be discussed below, if the implementation of the new routes is delayed, the economic concerns are, at a minimum, also delayed. In essence, the safety concerns stem from the Petitioners' position that there is not enough time to train and certify all operators and pilots for operations on the new Grand Canyon routes that are scheduled to be in place on May 1, 1997, and that this would create an inherently unsafe situation in the Grand Canyon. The FAA strongly disagrees with this assertion that implementing the new routes effective May 1, 1997, would be unsafe. Even though the FAA is committed to achieving the substantial restoration of natural quiet in the Park as soon as possible, safety is, and always will be, paramount. To that end, the FAA has been preparing to take dramatic steps to alleviate any potential problems that could adversely affect the safety in the Park on May 1, 1997, by arranging for additional inspectors to be available for the operators to complete the training on the new routes prior to the May 1, 1997, effective date. The FAA would never permit an unsafe situation to take place at the Grand Canyon.

While the FAA has been diligently working toward a May 1, 1997, implementation date for the entire rule, the Agency has also been reviewing comments concerning proposed routes and working toward the establishment of these routes. During the process of establishing the new routes in response to the final rule, the FAA has met with aviation users, Park users, and Native Americans. Several new and innovative ideas were offered by those groups. Many of these creative ideas suggest alternatives to both the existing environment at the Park and the proposed environment that could significantly improve the operating situation in both the environmental and operational arenas. These new suggestions have not yet been adequately explored, but are deserving of further investigation and analysis. Additional time would afford the FAA and the Department of the Interior (DOI) an opportunity to review these new ideas. In addition, the FAA is committed to a continued working relationship with the affected Native American tribal units, and the FAA intends to complete consultation with the affected Native American tribes concerning these new route suggestions pursuant to Section 106 of the National Historic Preservation Act. Although the FAA is fully prepared to implement the new route structure on May 1, 1997, as originally proposed, it would be extremely difficult to accommodate the new proposals now being discussed by that date.

The FAA has consulted with the DOI concerning the new suggestions received by the FAA and the need for further consultation. The DOI reexamined the situation at the Park and concluded that the implementation of the curfew as required by the final rule on May 1, 1997, will, on its own, be a significant step to achieving the substantial restoration of natural quiet in the Park. The subsequent implementation of the new air tour route structure, together with the proposal of quiet technology, will form the basis for the next step towards the substantial restoration of natural quiet. The DOI and the FAA have determined that additional time would be beneficial to permit the further exploration of these new ideas submitted by the affected and interested parties, and that a delay in the effective date of the implementation of the new routes in the Park is warranted. Therefore, to permit continued discussions on, and possible changes to, the proposed new routes and to permit further consultation with the Native American tribes, the FAA has determined to delay the effective date of the expansion of the flight-free zones and minimum altitudes as stated in 14 CFR Sections 93.301, 93.305 and 93.307 to January 31, 1998. The effective date of May 1, 1997, for all the other aspects of the rule, i.e., the curfew, aircraft limitations, and reporting requirements, will remain unchanged.

Since the FAA is delaying certain portions of the final rule, as stated above, SFAR 50–2 must be reinstated, and certain portions of the SFAR be extended. The continuation of the SFAR is vital to maintain the existing environmental and safety benefits. Specifically, the FAA finds it necessary to amend Section 9 of the reinstated SFAR 50–2 to extend the provisions of Sections 1, 4, and 5, (i.e., the Special Flight Rules Area, the flight-free zones and the minimum flight altitudes) until January 31, 1998. The termination of SFAR 50–2 Sections 1, 4, and 5 will coincide with the delayed effective date of 14 CFR Sections 93.301, 93.305, and 93.307.

On May 1, 1997, the provisions of the final rule that are unaffected by the pending route structure will go into effect. These provisions consist of the curfew, aircraft limitations, and reporting requirements, and are continued in 14 CFR Sections 93.303, 93.309, 93.311, 93.313, 93.315, 93.316, and 93.317. To avoid redundancy and confusion the FAA also finds it necessary to remove certain sections of SFAR 50–2 effective May 1, 1997. Sections 2, 3, 6, 7, and 8 will be removed on May 1, 1997 to coincide with the implementation of the above referenced sections of the final rule contained in part 93.

Further Consultation and Review

As mentioned above, during the comment period on the new routes, the FAA received many insightful and cogent comments on the proposed route structure. Consultation with the Native American representatives also produced several useful and valid alternate operational schemes. Many of these ideas received from the comments and through the consultations are innovative and may prove to be quite beneficial for both the safety and the environmental arenas. A good example of this concerns the direction of air tour traffic in the eastern side of the Park, e.g. in the Dragon Corridor. The FAA's preliminary view that traffic should operate in a clockwise direction is being revisited, based on comments from the air tour operators as well as from NPS. With new considerations given by the operators, the existing direction of traffic operations, ie., counterclockwise, may be the more safe and environmentally sound decision.

The FAA has determined that the responses to the proposed routes should be further analyzed prior to implementation of airspace changes. Therefore, in light of the comments and additional information received, the FAA will reexamine the proposed route structure in relation to the operating environment in the Park. The FAA expects to revisit the proposed route structure and incorporate several of the above mentioned ideas. Involvement of the interested and affected parties will be crucial in this process.

Notice and Comment

As is explained below, this final rule is being issued without prior notice and comment because of the time constraints. The FAA spent the month of January and most of February receiving and reviewing comments on the proposed routes and consulting with the various affected parties. Had the FAA not received the valuable information on the route structure that it did, the FAA would have been able to transmit the data on the proposed routes to the proper charting authorities

(the National Ocean Service [NOS]), and an aeronautical chart would have been available by at least April 1, 1997, that would have been used by the operators for training and navigational purposes. To have the appropriate chart produced by April 1, the FAA would have had to forward the charting data to NOS by February 21, 1997. However, once the FAA started to receive the relevant information from the commenters, the Agency had to make a determination as to whether to proceed with the proposed routes so as to have the routes and the complete Grand Canyon final rule effective and implemented on May 1, or whether to take additional time to analyze the comments and possibly develop a better and more comprehensive route structure that would not go into effect until after the busy summer tourist season.

Further, officials of the Park and NPS had suggested alterations and refinements in the route structure that have the potential to produce noise reduction benefits. They have requested the opportunity to explore these new options with the FAA. Both the FAA and the DOI believe that all these suggested changes could produce a significantly better rule for both the Park users and the aviation operators. Additional time is needed, however, to review, analyze, and implement these route changes, which, again, would preclude a May 1, 1997, effective date.

To permit what the FAA and the DOI believe will culminate in a better overall route structure, the FAA has decided not to send the originally proposed routes to NOS for charting, but to analyze the new ideas with the expectation of creating better routes. Due to the specific and strict requirements of NOS for the charting preparation time, any further alteration to the route structure, such as the ones suggested by DOI and interested parties, make it impossible to meet the charting date necessary for a May 1 effective date. A delay in the charting data to NOS would mean that NOS would not have been able to produce the charts by April 1 and, consequently, operators would not have been able to train their pilots by May 1. Essentially, therefore, any delay in sending the data to NOS results in an equivalent delay of the effective date. With the goal to produce the best routes possible, the FAA determined that it would be contrary to the public interest to implement the originally proposed routes when better alternatives might be available as a result of the comments received and the consultations with DOI and others.

Moreover, past experience has demonstrated that the training of pilots on new routes during a peak tourist season could be unsafe. At the Park, the peak season extends approximately from May through October. To eliminate the potential for unsafe operations within the Park, the FAA further determined that the training should take place in the Park when the volume of air traffic traditionally decreases, i.e., after the summer tourist season. For that reason, the FAA is delaying the effective date of the new airspace and route structure until January 31, 1998, to give the operators sufficient time to train their pilots adequately and safely after the close of the busy summer season. Therefore, the FAA finds that there is sufficient justification under 5 U.S.C. 553(b) to issue this rule without notice and an opportunity for comment. However, while there is not sufficient time to allow prior notice and comments concerning the FAA decision to delay the May 1 effective date, we invite comments concerning any other aspect of this notice, including the new implementation date of January 31, 1998.

Economic Evaluation

In promulgating the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost-benefit analysis of the rule. The delay in the implementation of 14 CFR Sections 93.301 and 93.307 will not affect that assessment. The delay in the implementation of Section 93.305 will be cost-relieving.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, FAA completed a final regulatory flexibility analysis of the final rule. The delay in the implementation of 14 CFR Sections 93.301, 93.305, and 93.307 will not have an effect on that analysis.

Federalism Implications

The amendment set forth herein will not have substantial direct effects on the States, or the relationship between the national Government and the State, 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 amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control, Reporting and recordkeeping requirements.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135 [AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 USC 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR No. 50–2 [Reinstated]

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2 is reinstated.

5. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 2, 3, 6, 7, and 8 are removed.

6. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Section 9. *Termination date.* Sections 1. Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 1998.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

7. The authority citation for part 93 continues to read as follows:

Authority: 49 USC 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new §§ 93.301, 93.305, and 93.307 to be

added to 14 CFR Chapter I is delayed until 0901 UTC, January 31, 1998.

Issued in Washington, DC, on February 21, 1997.

Barry L. Valentine,

Acting Administrator.

[FR Doc. 97–4824 Filed 2–21–97; 3:49 pm]

BILLING CODE 4910–13–M

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NATIONAL TRANSPORTATION SAFETY BOARD

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TENNESSEE VALLEY AUTHORITY

TVA power securities issued through Federal Reserve Banks; book-entry procedures

Correction; published 2-26-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Empresa Brasileira de Aeronautica, S.A. (EMBRAER); published 1-27-97

TREASURY DEPARTMENT

Customs Service

Customs bonds:

Softwood lumber shipments; entry from Canada; published 2-26-97

TREASURY DEPARTMENT

Thrift Supervision Office

Uniform Financial Institutions Rating System (CAMEL rating system); conforming amendments; published 1-27-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton and research promotion order:

Import assessment exemptions; automatic provisions adjustment; comments due by 3-3-97; published 1-31-97

Eggs and egg products and poultry and rabbit products; inspection and grading:

Fees and charges increase; comments due by 3-3-97; published 1-31-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Exotic Newcastle Disease; disease status change--

Costa Rica; comments due by 3-3-97; published 12-31-96

Pork and pork products from Mexico transiting United States; comments due by 3-3-97; published 12-31-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Hybrid corn seed; comments due by 3-3-97; published 1-2-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries--

Summer flounder, scup, and black sea bass; comments due by 3-7-97; published 2-5-97

DEFENSE DEPARTMENT

Acquisition regulations:

Independent research and development/bid and proposal costs for 1996 FY and beyond; comments due by 3-4-97; published 1-3-97

Federal Acquisition Regulation (FAR):

Automatic data processing equipment leasing costs; comments due by 3-3-97; published 12-31-96

Contract cost principles and procedures; foreign differential pay; comments due by 3-3-97; published 12-31-96

Contract modifications; comments due by 3-3-97; published 12-31-96

Contractor personnel compensation; comments due by 3-3-97; published 1-2-97

Year 2000 procurement issues; awareness and compliance; comments due by 3-3-97; published 1-2-97

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Ambient air quality standards, national--

Sulfur oxide (sulfur dioxide); comments due by 3-3-97; published 1-2-97

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

Colorado; comments due by 3-3-97; published 1-30-97

Delaware; comments due by 3-7-97; published 2-5-97

Massachusetts; comments due by 3-3-97; published 1-30-97

Toxic substances:

Significant new uses--

Aliphatic ester; comments due by 3-6-97; published 2-4-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Tennessee; comments due by 3-3-97; published 1-30-97

Texas; comments due by 3-3-97; published 1-17-97

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor personnel compensation; comments due by 3-3-97; published 1-2-97

Year 2000 procurement issues; awareness and compliance; comments due by 3-3-97; published 1-2-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Vaginal contraceptive products (OTC); comments due by 3-4-97; published 12-19-96

Medical devices:

Radiology devices; proposed classification--

Medical image management; comments due by 3-3-97; published 12-2-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Fair housing:

Residential real estate-related lending transactions and compliance with FairHousing Act; lender-initiated self-testing; comments due by 3-3-97; published 1-31-97

INTERIOR DEPARTMENT

Land Management Bureau

Land resource management:

Management, use, and protection of public lands

Criminal law enforcement provisions; consolidation; comments due by 3-7-97; published 1-17-97

Minerals management:

Leasing of solid minerals other than coal and oil shale; Federal regulatory review; comments due by 3-7-97; published 2-5-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Alexander Archipelago wolf and Queen Charlotte goshawk; status review; comments due by 3-5-97; published 2-14-97

Chinese Camp brodiaea, etc. (ten plants from foothills of Sierra Nevada Mountains); comments due by 3-6-97; published 2-4-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Maryland; comments due by 3-3-97; published 1-30-97

Pennsylvania; comments due by 3-3-97; published 1-30-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):