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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560–AF14

Special Combinations for Flue-Cured Tobacco Allotments and Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule provides for special, but highly limited, combinations of flue-cured tobacco allotments and quotas of farms having production flexibility contracts under the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) with farms without production flexibility contracts; and, for burley tobacco, an exemption to the loss of quota on farms with less than 1,000 pounds of quota when the farm would otherwise meet the requirements for a farm combination but for the existence of a production flexibility contract. Also this rule corrects certain technical references.

DATES: Effective April 2, 1997. Comments must be received by May 2, 1997 to be assured of consideration.

ADDRESSES: Submit comments on the interim rule to: Director, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue SW, Washington, DC 20250–0514. Comments may be faxed to 202–690–2298. All written submissions made pursuant to this rule will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., during regular Federal workdays.

FOR FURTHER INFORMATION CONTACT: Michael D. Thompson, Tobacco Branch, Tobacco and Peanuts Division, USDA, FSA, STOP 0514, 1400 Independence Avenue SW, Washington, DC 20250–0514, telephone 202–720–4318.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim rule since the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 and 7 CFR part 711, as applicable, must be exhausted.

Paperwork Reduction Act

This interim rule does not contain new or revised information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.). The information collections required in 7 CFR part 723 have previously been cleared under OMB control number 0560–0058.

Effective Date of Rule

It has been determined for purposes of all limitations that might otherwise apply, including any provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, that this rule should be effective immediately. The nature of this rule is to provide relief to flue-cured tobacco producers who were adversely affected by a previous rule that prohibited the combinations of certain farms subject to a production flexibility contract. The planting season for flue-cured tobacco begins in April and producers must make planting decisions for their 1997 crop. Therefore, it has been determined that delaying the implementation of this rule would be unnecessary, impractical, and contrary to the public interest. Accordingly, the rule is effective upon publication in the **Federal Register**.

Background and Discussion

After enactment of the 1996 Act, the Department of Agriculture promulgated regulations which provided, in conformance with the 1996 Act, for ''production flexibility contracts'' (PFC). The 1996 Act provides that farm reconstitutions, which are handled under 7 CFR part 718, cannot increase a PFC farm's eligibility for marketing loans under the 1996 Act.

To implement the latter requirement, regulations were published in the **Federal Register** (61 FR 37559, July 18, 1996) that amended § 718.201(a)(1) to prohibit the combination of land under a PFC with land not under a PFC.

Because of lease and transfer restrictions that apply only to flue-cured tobacco allotments and quotas, farm combinations have been the accepted means for producers to consolidate allotments to provide sufficient planting flexibility for crop rotations to avoid disease problems and meet conservation compliance requirements. Further, because of an 11.5 percent increase in the flue-cured tobacco national marketing quota for 1997 and larger than normal undermarketings from the 1996 crop, many producers will have difficulty obtaining sufficient cropland to produce the 1997 crop. Because the

planting season for flue-cured tobacco begins in April, it is urgent that flue-cured tobacco producers make their planting decisions for the 1997 crop. Therefore, this rule is effective immediately upon publication in the **Federal Register**. It does not appear that Congress meant, by the production flexibility contract provisions, to adversely affect the ability of flue-cured tobacco producers to conduct normal operations to produce their crop, except as such restrictions might be needed to protect the production flexibility program.

Accordingly, this rule amends the tobacco regulations in 7 CFR part 723 to allow the Deputy Administrator to permit special highly limited combinations of flue-cured tobacco allotments and quotas on PFC farms and non-PFC farms which will be effective for flue-cured tobacco purposes only. Such permission will be conditioned upon the agreement of interested parties not to use the land on the PFC farm that otherwise would have been planted to tobacco to produce a PFC commodity. The following commodities are PFC commodities under the 1996 Act: wheat, corn, grain sorghum, barley, oats, upland cotton, and rice. Failure to comply with that agreement will render the special combination void and can result in penalties for tobacco marketings that are in excess of allowable marketings. The Deputy Administrator may set other conditions as necessary to comply with all relevant statutory schemes.

In addition, a related change is made for burley tobacco in 7 CFR part 723 concerning situations in which, due to a farm reconstitution by division, a resulting farm may have less than 1,000 pounds of burley quota. That restriction is derived from section 379(c) of the Agricultural Adjustment Act of 1938. In order to avoid the loss of such quota on these farms, the quota may be sold, additional quota purchased, or the farm combined with another farm owned by the person so that at least 1,000 pounds of quota is amassed on the resulting farm. Here also, because of a PFC participation, some farm combinations which would otherwise be permitted, may no longer be allowed. This rule allows the Deputy Administrator to grant an exception to this minimum quota requirement if the farm could otherwise be combined with another farm so that the resulting farm would meet the 1,000 pound minimum, but such combination is prohibited because of PFC participation.

Regulations governing the reconstitutions of farms that were previously in 7 CFR part 719 are now found in 7 CFR part 718, subpart C as a result of a rule published in the **Federal Register** on July 18, 1996 (61 FR 37544, July 18, 1996). This interim rule corrects the references contained in part 723 accordingly.

List of Subjects in 7 CFR Part 723

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas, Penalties, Reconstitutions, Tobacco.

Interim Rule

For the reasons set forth in the preamble, 7 CFR part 723 is amended as follows:

1. The authority citation for 7 CFR part 723 continues to read as follows:

PART 723—[AMENDED]

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–79, 1421, 1445–1, and 1445–2.

2. Section 723.209 is amended by adding paragraph (c) to read as follows:

§ 723.209 Determination of acreage allotments, marketing quotas, and yields for combined farms.

* * * * *

(c) *Special combinations.* Notwithstanding other provisions of this title, the Deputy Administrator may, upon proper application and to the extent deemed consistent with other obligations, permit, with respect to allotments and quotas for flue-cured tobacco, two farms to be considered combined for purposes of this part and part 1464 of this title only, even though one of the farms involved is subject to a production flexibility contract (PFC) entered into under the provisions of 7 CFR part 1412. Such farms must otherwise meet the requirements for farm combinations in part 718. Such permission shall be conditioned upon the agreement of all interested parties that land on the PFC flue-cured quota farm that would have been used for the production of tobacco shall not be used for the production of any PFC commodity. A failure to comply with this provision shall render this special combination void, retroactive to the date of original approval. Such action may result in tobacco acreage in excess of the allotment and in marketing quota penalties on any excess marketings of tobacco. The Deputy Administrator may set such additional conditions on the production of tobacco on such farms as deemed necessary to serve the goals of the tobacco program and the goals of the production flexibility contract. The term ''PFC commodity'' for purposes of this paragraph means wheat, corn, grain sorghum, barley, oats, upland cotton, and rice.

3. Section 723.208 is amended by adding paragraph (b)(6)(v) to read as follows:

§ 723.208 Determination of acreage allotments, marketing quotas, and yields for divided farms.

* * * * *

(b) * * *

(6) * * *

(v) when the individual tract or farm with less than 1,000 pounds of quota could be combined with another tract or farm with sufficient quota to reach 1,000 pounds but for the existence of a production flexibility contract on one of the farms.

* * * * *

§§ 723–723.509 [Amended]

4. Sections 723.101 through 723.509 are amended by removing the numbers ''719'' each time they appear and adding in their place ''718''.

Signed at Washington, DC, on March 25, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–8415 Filed 4–1–97; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulations H and K, Docket No. R–0921]

Government Securities Sales Practices; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Joint final rule; correction.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) published in the **Federal Register** of March 19, 1997, a document regarding sales practices concerning government securities by depository institutions within their respective jurisdictions. This document corrects two inadvertent errors regarding the Board's interpretation entitled ''Obligations concerning institutional customers.''

DATES: Effective on July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lawranne Stewart, Senior Attorney (202–452–3513), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202–452–3544).

SUPPLEMENTARY INFORMATION: The OCC, Board and FDIC published their joint

final rule on March 19, 1997 (62 FR 13276) in which the Board added §§ 208.25 and 208.129 to Regulation H (12 CFR part 208). The Board's amendatory instruction number 3. ''§ 208.129 is added to subpart B'' will be corrected to read ''§ 208.129 is added to subpart E''. In § 208.129, paragraph (b), in the first sentence, the cite ''§ 208.25(b)'' will be corrected to read ''§ 208.25(d).''

In final rule FR Doc. 97–6803, published on March 19, 1997 (62 FR 13276), make the following corrections:

1. On page 13285, in the third column, instruction 3., remove ''subpart B'' and add in its place ''subpart E.''

2. On page 13285, in the third column, under § 208.129, paragraph (b), in the first sentence, remove ''§ 208.25(b)'' and add in its place ''§ 208.25(d).''

By order of the Board of Governors of the Federal Reserve System, March 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8358 Filed 4–1–97; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Programs

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is modifying its rules regarding the financing and securitization of the unguaranteed portion of loans it guarantees under Section 7(a) of the Small Business Act. Present SBA regulations allow only non-depository lenders to engage in these practices (13 CFR 120.420, revised as of March 1, 1996). This interim rule will permit both depository and non-depository lenders to pledge or sell the unguaranteed portions of SBA guaranteed loans.

During the pendency of this interim final rule, subject to compliance with all other aspects of the interim final rule, SBA expects to give favorable review to any transaction which complies with the retainage requirements described in the notice of proposed rulemaking relevant to financing and securitization which appeared in the **Federal Register** on February 26, 1997. If SBA is presented with a transaction which is not structured in a manner consistent with such retainage requirements, SBA will need to assure itself as to safety and soundness considerations and compliance with the interim rule before giving its approval.

DATES: Effective: April 2, 1997.

Comments must be submitted on or before May 2, 1997.

ADDRESSES: Please mail all comments to Jane Palsgrove Butler, Acting Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Room 8200, Washington, D.C. 20416.

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 guarantee 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 sell the unguaranteed portions of SBA guaranteed loans, thereby permitting them to fund unguaranteed portions of SBA guaranteed loans with the proceeds of loans or securities offerings (securitizations). (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 them the same ability to offset the increase in commitment of capital needed for them to continue participation in the program. These lenders 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 the sale of unguaranteed portions under SBA's present regulations after March 31, 1997, unless SBA develops regulations permitting all participating lenders to sell the unguaranteed portions of their SBA guaranteed loans. See § 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 conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.''

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 60649, Nov. 29, 1996.

SBA received nine responses, including one response which had four signatories. The comments addressed several questions posed in the advance notice of proposed rulemaking regarding how the statutory mandate should be satisfied.

On February 26, 1997, at 62 FR 8640, SBA published a notice of proposed rulemaking on this subject. The proposed rulemaking took the comments on the advance notice of proposed rulemaking fully into consideration. The public was given 30 days to comment on the proposal. As of March 21, 1997, SBA had not received any comments from the public in response to the proposed rulemaking.

SBA recognizes the complexity of the issues surrounding the various means for implementing the statutory mandate. It is clear that additional time will be necessary to develop a full spectrum of comment on the notice of proposed rulemaking. It is SBA's desire to have the broadest possible public involvement in this rulemaking. At the same time, SBA does not wish to penalize any lender seeking to conduct a pledging or sale transaction after March 31, 1997.

Under these circumstances, SBA has decided to extend, for an additional 30 days, the comment period on its proposed rule. Pending its review of all comments received and its issuance of a final rule on the subject, SBA also will promulgate an interim final rule which will allow all lenders in the program to proceed with securitizations, subject to prior SBA approval on a case by case basis. In this regard, SBA will extend to all of its lenders, on an interim basis, an existing regulation which previously has been applicable only to non-depository lenders. This will afford SBA the opportunity to obtain further public comment, to consider how best to implement the statutory directive that a new rule be finalized, and to permit interim transactions to go forward on a basis consistent with safety and soundness in the program.

SBA is convinced that it can review any transactions which take place during the interim period in a manner sufficient to protect such safety and soundness. It should be noted that all pledging or sale transactions which have taken place since 1992 have been

carefully reviewed by SBA personnel. SBA has ensured that language adequate to protect its interest has been built into the documentation for all of these transactions and that the transactions themselves do not add undue risk to the program. It will employ similar procedures in reviewing any transactions taking place during the pendency of the interim rule.

While interested in receiving extensive comments on its proposed rule, SBA still believes that it sets out a reasonable approach to approving sales of the unguaranteed portions of SBA loans. Accordingly, subject to compliance with all other aspects of the interim rule, SBA expects to give favorable review to any interim period transaction which complies with the retainage requirements described in the notice of proposed rulemaking. If it is presented with a transaction which is not structured in a manner consistent with such retainage requirements, SBA will need to assure itself as to safety and soundness considerations and compliance with the interim rule before giving its approval.

As expressed in both the advance notice and the notice of proposed rulemaking, SBA is concerned that there are multiple issues which need to be fully explored before this extremely complex matter is finally resolved. It is SBA's expectation that the public will comment on the substance of both the advance notice and the proposed rule during the pendency of this interim final rule, and that such comment will serve as the basis for a new final rule to be published shortly after the extended comment period closes.

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 interim final rule does not constitute a significant rule within the meaning of Executive Order 12866 and will 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.* It believes this rule is not likely to have an annual economic effect of $100 million or more, but requests comment from the public on its perception of the costs and benefits associated with this rule to enable it to decide whether to prepare a cost benefit analysis in conjunction with the final rule. SBA believes that the rule 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 rule is consistent with the mandate of section 103(e) of Public Law 104–208 that it 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. SBA believes that the reserve requirements and other safeguards built into the rule satisfy this concern. For the reasons set forth above, SBA believes that the rule will help SBA lenders support an increased volume of SBA lending. Finally, the rule has 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 amends Part 120 of Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOANS

1. The authority citation for 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 Lender may pledge the notes evidencing SBA guaranteed loans or sell the unguaranteed portions of such loans if SBA, notwithstanding the provisions of Sec. 120.453(c), in its sole discretion, gives its prior written 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.

(b) The Lender, SBA, and any third party involved in the transaction, as determined by SBA in its sole discretion, must enter into a written agreement satisfactory to SBA acknowledging SBA's interest as guarantor of the subject loans and accepting that 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) The Lender, SBA, or third party custodian agreeable to SBA, will hold all pertinent Loan Instruments, and the Lender will continue to service the loans after the pledge or transfer is made; and

(2) The Lender must retain an economic risk in and bear the ultimate risk of loss on the unguaranteed portions. This must be demonstrated to SBA's satisfaction by establishing a sufficient reserve fund at the time of sale of the unguaranteed portions and, in the case of pledging notes, by retaining all of the economic interest in the unguaranteed portion of any loan which a note evidences.

(c) The 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.

Dated: March 26, 1997.

Ginger Ehn Lew,

Acting Administrator.

[FR Doc. 97–8416 Filed 4–1–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–027]

Amendment of Class E Airspace; Montrose, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Montrose, Colorado, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Montrose Regional Airport.

EFFECTIVE DATE: 0901 UTC, July 17, 1997.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Operations Branch, ANM–532.1, Federal Aviation Administration, Docket No. 96–ANM–027, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On January 29, 1997, the FAA proposed to amend part 71 of the

Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Montrose, Colorado, to accommodate a new GPS SIAP to the Montrose Regional Airport (62 FR 4220).

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from the surface, and from 700 feet or more above the surface of the earth, are published in paragraph 6002 and paragraph 6005, respectively, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Montrose, Colorado. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ANM CO E2 Montrose, CO [Revised]

Montrose Regional Airport, CO
(Lat. 38°30′32″ N, long. 107°53′38″ W)
Montrose VOR/DME
(Lat. 38°30′23″ N, long. 107°53′58″ W)

That airspace extending upward from the surface within a 4.8-mile radius of the Montrose Regional Airport, and within 3.5 miles each side of the Montrose VOR/DME 313° radial extending from the 4.8-mile radius to 12.2 miles northwest of the VOR/DME, and within 2.5 miles each side of the Montrose VOR/DME 360° radial extending from the 4.8-mile radius to 8.5 miles north of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM CO E5 Montrose, CO [Revised]

Montrose Regional Airport, CO
(Lat. 38°30′32″ N, long. 107°53′38″ W)
Montrose VOR/DME
(Lat. 38°30′23″ N, long. 107°53′58″ W)

That airspace extending upward from 700 feet above the surface within 4.3 miles northeast and 8.3 miles southwest of the Montrose VOR/DME 313° and 133° radials extending from 6.1 miles southeast to 21.4 miles northwest of the VOR/DME, and within 4 miles each side of the Montrose VOR/DME 360° radial extending to 9.5 miles north of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a point beginning at lat. 38°40′00″ N, long. 108°46′00″ W; to lat. 38°25′00″ N, long. 108°42′30″ W; to lat. 37°58′00″ N, long. 108°10′00″ W; to lat. 38°09′00″ N, long. 107°35′00″ W; to lat. 38°43′00″ N, long. 107°39′30″ W; to lat. 38°51′30″ N, long. 107°41′00″ W; to lat. 38°50′00″ N, long. 107°53′00″ W; to lat. 38°53′00″ N, long. 108°03′30″ W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on March 19, 1997.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–8371 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 97–AGL–11]

Modification of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies Class E airspace areas at Minot, ND. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: Effective date: 0901 UTC, May 22, 1997. Comment date: Comments must be received on or before April 15, 1997.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, Operations Branch, AGL–530, Docket No. 97–AGL–11, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. If the FAA receives no adverse comments in response to this action, this rule will become effective on the date specified in the **DATES** section. After the review, if the FAA finds that further chances are appropriate, it will initiate rulemaking proceedings to amend the regulation.

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. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace areas at Minot, ND. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Minot International Airport, Minot, ND, when the control towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AGL ND E4 Minot, ND [Revised]

Minot International Airport, ND
(Lat. 48°15′34″ N., long. 101°17′14″ W.)

That airspace extending upward from the surface within 3.5 miles each side of the Minot VORTAC 129° radial extending from the 4.2-mile radius of Minot International Airport to 7 miles southeast of the VORTAC and within 3.5 miles each side of the Minot VORTAC 260° radial, extending from the 4.2-mile radius of the airport to 7 miles west of the VORTAC and within 3.5 miles each side of the Minot VORTAC 327° radial, extending from the 4.2-mile radius of the airport to 7 miles northwest of the VORTAC and within 3.5 miles each side of the Minot VORTAC 097° radial, extending from the 4.2-mile radius to 7 miles east of the VORTAC, excluding the portion which overlies the Minot AFB, ND, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on March 19, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–8369 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33–7407; 34–38446; 35–26695; 39–2349; IC–22587; IA–1624]

Informal Guidance Program for Small Entities

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement.

SUMMARY: The Securities and Exchange Commission is issuing a policy statement discussing its informal guidance program for small entities (and others) as required by the Small Business Regulatory Enforcement Fairness Act, Public Law 104–121, 110 Stat. 857 (1996).

DATES: This Policy becomes effective March 29, 1997.

FOR FURTHER INFORMATION CONTACT: For General Information: Amy Kroll, Assistant General Counsel, at (202–942–0927) or Anne H. Sullivan, Senior Counsel, at (202–942–0954), Office of General Counsel. For information from specific divisions or offices, as follows: James R. Budge, Special Counsel, at (202–942–295), Division of Corporation Finance; Natalie Bej, Special Counsel, at (202–942–0660), Division of Investment Management; Gary W. Sutton, Special Counsel, at (202–942–0073), Division of Market Regulation; Robert E. Burns, Chief Counsel, at (202–942–4400), Office of Chief Accountant.

SUPPLEMENTARY INFORMATION: On March 29, 1996, Congress adopted the Small Business Regulatory Enforcement Fairness Act (''SBREFA''),[1] which seeks to improve the regulatory climate for small entities[2] by, among other things:

[1] Pub. L. 104–121, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

[2] The definition of ''small entity'' under SBREFA is the same as the definition of ''small entity'' under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''Reg. Flex. Act''). SBREFA section 221(1). The Reg. Flex. Act defines ''small entity'' to include ''small business.'' Pursuant to the Reg. Flex. Act, 5 U.S.C. 601(3), the Commission adopted appropriate definitions of ''small business'' for purposes of the Reg. Flex. Act. See 17 CFR 270.0–10; 17 CFR 275.0–7; 17 CFR 240.0–10; 17 CFR 230.157; and 17 CFR 250.110. The Commission recently proposed amendments to these definitions. *Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933*, Securities Act Rel. No. 7383, 62 FR 4106 (Jan. 28, 1997). The Commission extended the comment period on the proposed amendments to the definitions to April 30, 1997, 62 FR 13356 (Mar. 20, 1997).

Based on an analysis of the language and legislative history of the Regulatory Flexibility Act,

• Expanding the extent to which the rule-making process must include evaluation of the impact of proposed rules and rule changes on small entities; [3]

• Expanding the rights of action for small businesses to seek judicial review of rules impacting small entities; [4]

• Requiring agencies to establish small entity penalty reduction or waiver policies; [5] and

• Directing agencies to expand their efforts to provide formal and informal guidance to small entities.[6]

This release sets out the Commission's informal guidance program for small entities, as required by SBREFA. The Commission has reviewed the various ways it provides informal compliance guidance to determine whether it effectively answers ''inquiries of small entities seeking information on and advice about regulatory compliance,'' and ''utiliz[es] existing functions and personnel of the agency to the extent practicable.'' [7]

From the time the Commission was created, its staff has provided the public with a wide range of informal guidance regarding securities regulation. Commission staff provides informal guidance to members of the public by telephone and no-action and interpretive letters, described in detail below. In addition, the Commission, or the staff by delegation, may issue exemptions from certain statutory and regulatory requirements. From time to time, the Commission has issued releases describing these sources of informal guidance. The Commission also has designated small entity compliance guides that also describe these sources of informal guidance.[8]

The Commission's formal and informal efforts on behalf of small business date from 1936, when the Commission adopted Regulation A, an exemption from registration for certain small business offerings. Chairman William O. Douglas' efforts on behalf of small businesses in the securities markets were a precursor to the creation of the Small Business Administration in 1958.[9] Since the adoption of Regulation A, the Commission regularly has updated abbreviated disclosure procedures and exemptions for small businesses and encouraged input from small businesses.[10] In 1977, an SEC advisory committee on corporate disclosure suggested more ways that the Commission could assist small business capital formation.[11] Shortly thereafter, in 1979, the Commission created an Office of Small Business Policy.

For fifteen years, the Commission has cosponsored the annual Government-Business Forum on Small Business Capital Formation, where small businesses can let state and federal government officials know how laws, rules and regulations are affecting their ability to raise capital. In the past year, the Commission appointed a Small Business Ombudsman. The Commission also initiated ''town hall'' meetings with small businesses around the country to convey basic information about securities regulation to small businesses and to learn more about their concerns and problems in raising capital.[12] The Office of Small Business and the Small Business Ombudsman informally answer questions from small business issuers about securities registration, securities offerings, and periodic reporting received by telephone, e-mail, and in writing.[13]

Informal guidance, for purposes of SBREFA, is an answer to an inquiry from a small entity concerning information on, and advice about, compliance with statutes and regulations administered by an agency, interpreting and applying the law to specific facts supplied by the small entity.[14] The Managers Statement inserted into the Congressional Record after the enactment of SBREFA by the chairmen who introduced SBREFA cites the Commission's existing informal guidance program as a ''successful'' one, and expresses the committees' intent to encourage the Commission's efforts:

> The Act directs agencies that regulate small entities to answer inquiries of small entities seeking information on and advice about regulatory compliance. Some agencies already have established successful programs to provide compliance assistance and the amendment intends to encourages these efforts. For example, the * * * SEC * * * [has] an established practice of issuing private letter rulings applying the laws to a particular set of facts.[15]

The Commission has reviewed its current informal guidance program, and has determined that it is consistent with the requirements of SBREFA. The ommission will monitor this area, however, and may supplement the informal guidance program should it appear necessary in the future. The Commission intends that this release serve as a comprehensive resource for small entities wondering where and how to obtain informal Commission guidance.

I. Informal Guidance Program

The Commission's operating divisions and offices provide the public with informal guidance about the applicability of the federal securities laws to specific facts. Commission staff also provide informal guidance to the

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Congress does not appear to have intended that Act to apply to natural persons (as opposed to individual proprietorships) or to foreign entities. This interpretation has not been tested in court, but the Commission understands that staff at the Small Business Administration (''SBA'') have taken the same position. Telephone conversation with Gregory J. Dean, Jr., Assistant Chief Counsel for Finance and Programs, SBA Office of Advocacy (Mar. 13, 1997).

[3] 5 U.S.C. 603(a) and 605(b), codifying SBREFA sections 241 and 243.

[4] 5 U.S.C. 611, codifying SBREFA section 242.

[5] SBREFA section 223.

[6] SBREFA sections 212, 213, 214 (codified at 15 U.S.C. 648(c)(3)), and 215.

[7] Both the statutory language and statements inserted into the Congressional Record after enactment of SBREFA by the chairmen who introduced SBREFA stress that, in determining how to comply with the informal guidance mandate of SBREFA, agencies may exercise their discretion. See, *e.g.*, ''Small Business Regulatory Enforcement Fairness Act—Joint Managers Statement of Legislative History and Congressional Intent,'' 142 Cong. Rec. S3243 (daily ed. Mar. 29, 1996) (hereafter ''Managers Statement'').

[8] See, *e.g.*, 17 CFR 202.2 (pre-filing assistance and interpretive advice); *Procedure Applicable to Requests for No Action or Interpretive Letters*, Securities Act Rel. No. 5127, 36 FR 2600 (Jan. 25, 1971); *Procedures Utilized by the Division of Corporation Finance for Rendering Informal Advice*, Securities Act Rel. No. 6253, 45 FR 72644 (Oct. 28, 1980); *Procedures Applicable to Requests for No-Action or Interpretive Letters*, Securities Act Rel. No. 6269, 45 FR 81917 (Dec. 5, 1980); and *Expedited Publication of Interpretive, No-Action and Certain Exemption Letters*, Securities Act Rel. No. 6764, 53 FR 12412 (Apr. 14, 1988) (releases on no-action and interpretive letter procedures). See also, ''The Work of the SEC'' and ''Q & A: Small Business and the SEC.''

[9] Seligman, *Transformation of Wall Street* (2d ed. 1995) at 200–205.

[10] See, *e.g.*, Securities Act Rel. No. 5125 (Jan. 7, 1971), increasing the maximum amount of offering price for securities offered under Regulation A.

[11] House Committee on Interstate and Foreign Commerce, *Report of the Advisory Committee on Corporate Disclosure to the SEC*, H. Doc. No. 29, 95th Cong, 1st Sess. (1977).

[12] The Commission held town hall meetings in Los Angeles, California (September 13, 1996); Minneapolis, Minnesota (September 30, 1996); St. Louis, Missouri (October 9, 1996); Evanston, Illinois (October 17, 1996); Ft. Lauderdale, Florida (November 6, 1996); and Cambridge, Massachusetts (November 13, 1996).

[13] These offices receive inquiries from both small issuers that file documents with the Commission and small issuers that take advantage of exemptions under the statutes or safe harbors under Commission rules.

[14] SBREFA section 213(a).

[15] Managers Statement, 142 Cong. Rec. S3243 (daily ed. Mar. 29, 1996). The Committee Chairmen suggested that, although the legislation did not mandate changes in current programs at a number of agencies, including the Commission, these agencies should consider establishing less formal means of providing small entities with informal guidance, such as the use of toll-free telephone numbers. The Committees apparently were unaware at the time of these comments that since October 1994 the Commission has had a toll-free number for public use, 800–SEC–0330.

general public, issuers and existing and prospective regulated entities about compliance with registration requirements. This guidance takes several forms, including publications, responses to inquiries received by telephone and computer, and no-action and interpretive letters.[16] Staff at Commission headquarters generally respond to all inquiries. Regional and district office staff may respond to questions regarding certain matters, or may refer questions to the appropriate headquarters office for a response.

A. Telephone, Computer, and Written Informal Guidance

At the Commission's headquarters, the operating divisions and offices provide informal guidance as follows:

- *Division of Investment Management*—responds to telephone and written inquiries and issues no-action and interpretive letters relating to investment companies and investment advisers through its Office of Chief Counsel. Telephone number: 202–942–0659.
- *Division of Market Regulation*—responds to telephone and e-mail inquiries through its Office of Interpretations and Guidance and issues no-action and interpretive letters about securities markets, including exchanges, and securities market intermediaries, including broker-dealers, transfer agents, clearing agencies, and securities information processors. Telephone number: 202–942–0073. E-mail address: marketreg@sec.gov.
- *Division of Corporation Finance*—responds to telephone inquiries and issues no-action and interpretive letters relating to small business matters through its Office of Small Business. The Small Business Ombudsman, the Commission's liaison to and spokesman for small business, also is available through this division. Telephone number: 202–942–2950.
- *Division of Corporation Finance*—responds to all other telephone inquiries and e-mail inquiries about the offer and sale of securities, as well as issuer and ownership reporting and stockholder voting, and issues no-action and interpretive letters through its Office of Chief Counsel. Telephone number: 202–942–2900.[17] E-mail address: e-prospectus@sec.gov.
- *Office of Chief Accountant*—responds to telephone and written inquiries from registrants and their legal and accounting advisers on financial reporting matters, including, but not limited to, auditor independence, interpretations of FASB accounting standards, and Commission reporting requirements under Regulation S–X. This office, in conjunction with the Division of Corporation Finance, also publishes Staff Accounting Bulletins that address specific issues of accounting and auditing practice, usually based on specific facts.[18] Staff Accounting Bulletins are informal guidance for purposes of SBREFA when they address accounting and auditing practice with regard to specific sets of facts.

B. No-Action and Interpretive Letters

As noted above, the Commission's Divisions of Market Regulation, Investment Management and Corporation Finance provide informal written advice in the form of no-action and interpretive letters. In a no-action letter a Division states that it will not recommend any enforcement action to the Commission if the requesting party acts in accordance with specific facts and representations made in its letter. In some instances the Division will state that it is not able to give such assurance. In an interpretive letter a Division interprets a specific statutory provision, rule or regulation in the context of a factual situation described in the request. The Divisions will not respond to certain types of questions, including, for example, hypothetical or overly general ones.[19] In general, only the party or parties requesting a no-action or interpretive position may rely on a no-action or interpretive letter, and they may rely on the position with regard only to the specific facts addressed in the letter. In certain cases, however, the staff of a Division may approve reliance by third parties.[20]

Staff no-action and interpretive letters are available to the public at Commission headquarters and at certain regional offices. Computerized legal research firms also provide these letters, usually for a fee. Letters are available to the public as soon as practicable after the staff sends the letter to the requesting party. No-action and interpretive letters may be treated as confidential for up to 120 days, however, if the Division issuing the letter determines that a request for such treatment is reasonable and appropriate.[21]

The Commission takes the position that staff no-action and interpretive positions do not constitute Commission precedent and do not bind subsequent Commission action.[22] Although staff informal guidance assists the public to understand how to comply with the Commission's rules and policies, the Commission reserves the right to act contrary to staff advice. On the other hand, the Commission occasionally issues interpretive releases on selected subjects or areas of the law designed to inform the public about the staff's current views and to reduce the need for no-action and interpretive requests. In addition, when proposing or adopting rules and rule amendments, the Commission may cite with approval letters issued by the staff in the area. In each of these cases, the Commission effectively adopts the staff positions as its own. In appropriate cases, the Commission, or the Divisions by delegated authority, also may grant exemptive relief, subject to compliance with specified conditions, from certain statutory and regulatory provisions. Although exemptions technically are not informal guidance, they provide relief from regulatory burdens that is less formal than rulemaking. Third parties ordinarily cannot rely on exemptions.

II. Inspections, Examinations and Enforcement Actions Do Not Provide Informal Guidance

The Office of Compliance Inspections and Examinations (''OCIE'') examines registered broker-dealers, investment advisers, and investment companies. If, during the course of an examination or inspection, OCIE uncovers a potential securities law violation, it may refer the matter to the Division of Enforcement, or issue a deficiency letter to the regulated entity. At times, a regulated entity will receive a deficiency letter

[16] Responses to such inquiries are informal guidance for purposes of SBREFA only if the Commission staff interprets or applies the securities laws to specific facts supplied by or on behalf of a small entity.

[17] The Division of Corporation Finance makes publicly available through the Public Reference Room and publication on the Commission's Web site a compilation of significant positions provided in response to telephone inquiries. The Division also makes public a monthly listing of significant no-action letters, as well as a summary of those positions.

[18] See 17 CFR 211.

[19] See Commission releases on no-action and interpretive advice cited at n.8.

[20] The Divisions of Corporation Finance and Market Regulation specify when others may rely upon the advice in a no-action letter. The Division of Investment Management generally permits third parties to rely on no-action or interpretive letters to the extent that the third party's facts and circumstances are substantially similar to those described in the underlying request for a no-action or interpretive letter.

[21] See 17 CFR 200.81.

[22] SBREFA provides that ''[i]n any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.'' SBREFA section 213(a).

and also will be referred to the Division of Enforcement. Deficiency letters describe problems found in an examination, and direct the recipient to correct the problems in a given period of time.

The Division of Enforcement does not provide any informal guidance to the public as to compliance with the securities laws. The Division investigates possible violations of the federal securities laws with a view toward advising the Commission whether civil or administrative action should be initiated, and prosecutes any such actions approved by the Commission.[23]

III. Information Outside the Informal Guidance Program

The Commission also provides numerous sources for general information that are outside the informal guidance program. A brief description of these follows.

A. Municipal Securities Ombudsman

The Municipal Securities Ombudsman, in the Office of Municipal Securities, assists municipal securities issuers in obtaining information from Commission staff. The telephone number for the Municipal Securities Ombudsman is 202–942–7300. The e-mail address is oms@sec.gov.

B. Commission Web Site

The Commission maintains a site on the World Wide Web at http://www.sec.gov. This Web site contains brochures, news, and information about the Commission, including a list of Commission Internet mailboxes at htpp://www.sec.gov/asec/mailboxes. The Commission also provides access to its electronic filing database, known as EDGAR, through the Web site. The EDGAR database includes most recently filed registration statements, periodic reports and other disclosure documents filed with the Commission. The Web site also includes a page that contains information of special interest to small businesses, and a list of pending and completed Commission rulemakings of particular relevance to small businesses.

C. General Publications and Information on Request

The Commission makes available a variety of publications and resources for information about the Commission and the federal securities laws. On January 28, 1997, the Commission designated many of these publications as small business compliance guides and described how to obtain these materials.[24]

D. General Information, Filings and Releases on Request

The Commission's Office of Investment Education and Assistance produces educational material and programs for the public that describe preventive measures investors can take to protect their investments from fraud and abuse. Members of the public may reach this office at the Commission's toll-free number, 800-SEC–0330, to obtain information on topics of current interest and to obtain specific publications. Members of the public also may telephone the Public Reference Room at 202–942–8090, or write to the Public Reference Room at the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549 to obtain non-confidential documents from the Commission.[25] Information available from the Public Reference Room includes copies of Commission opinions, statements of policy adopted by the Commission, certain staff manuals and instructions, indices of opinions and statements of policy, required filings with the Commission that are not confidential, requests or petitions for a change in Commission rules, no-action and interpretive letters, exemptions from Commission regulation (when publicly available), transcripts of public proceedings, and Commission reports to Congress.[26] Some of these items also may be retrieved from the Commission's Web site.

IV. Regulatory Requirements

The Commission's informal guidance program is not an agency rule and, therefore, the provisions of the Administrative Procedure Act (''APA'') regarding notice of proposed rulemaking, opportunities for public participation, and prior publication are not applicable.[27] Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or another statute, are not applicable.[28]

Dated: March 27, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–8359 Filed 4–1–97; 8:45 am]

BILLING CODE 8010–01–P

[23] SBREFA requires agencies to establish penalty reduction policies for small entities, which the Commission is doing in a companion release issued today. Securities Act Rel. No. 7408 (Mar. 27, 1997).

[24] Securities Act Rel. No. 7342; 62 FR 4104 (Jan. 28, 1997) (codified at 17 CFR 202.8).

[25] The Commission generally will not publish or make available materials:

(1) specifically authorized by executive order to be kept secret or that are classified;

(2) related solely to internal personnel rules and practices;

(3) specifically exempted from disclosure by statute;

(4) containing privileged and confidential personal financial information or disclosing trade secrets;

(5) that are interagency or intra-agency memoranda or communications, except those which would routinely be made available in litigation;

(6) that are records whose release would constitute a clearly unwarranted invasion of personal privacy;

(7) that are records compiled for law enforcement purposes;

(8) contained in or related to any examination of financial institutions; or

(9) that set forth geological or geophysical information and data concerning wells.

17 CFR 200.80(b).

[26] The Public Reference Room charges for copies of these materials.

[27] 5 U.S.C. 553.

[28] 5 U.S.C. 601–602.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE44

Federal Old-Age, Survivors and Disability Insurance; Report of Earnings Under the Social Security Earnings Test

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: This final rule amends our regulations regarding reports of earnings to the Social Security Administration (SSA) required of beneficiaries who work and earn more than the applicable exempt amount. Beneficiaries under age 70, who work and earn more than the applicable exempt amount, are required by law to report their earnings to SSA within three months and 15 days following the close of their tax year (usually April 15). As a result of our ongoing efforts both to improve customer service and to reduce the public's paperwork burden, we are changing our regulations to state that we can accept the W–2 report filed by the employer with SSA, and/or the self-employment income tax return filed by the beneficiary with the Internal Revenue Service (IRS), as the report of earnings. We will use the information (wages and net earnings from self-employment) contained in those reports together with other pertinent information to adjust benefits under the earnings test.

DATES: This final rule is effective April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Division of Regulations and Rulings, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–5121. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Under the Social Security earnings test set out in section 203 of the Social Security Act (the Act), benefits are reduced if the annual earnings of a beneficiary (receiving other than disability benefits), under age 70, exceed certain exempt amounts. The exempt amounts are established by law. Individuals who are entitled to a monthly benefit (other than a disability benefit) during the year and who earn over the exempt amount are required to file a report of earnings with the SSA within three months and 15 days following the close of their tax year (usually April 15). The reports may be filed on a form prescribed by SSA, or in person, or by telephone. The report may be filed by someone other than the beneficiary, provided the report contains the required information. Failure to file a report as required will result in a monetary penalty, unless we find that there was good cause for filing late. There are 330,833 public reporting burden hours associated with the completion and filing of these annual earnings reports.

Working beneficiaries are also required to report their income to the IRS during the same time period. SSA receives and processes W–2 information from employers. We also receive limited information from IRS from individual self-employment income tax returns that are filed. Wages and net-earnings from self-employment are ''posted'' to individual earnings records as part of our mission to maintain accurate earnings records for benefit payment. Until recently, we have been unable to use the earnings information we receive from W–2 forms and self-employment tax returns as the annual report because it took several years for SSA to receive and process the earnings information from the W–2 forms and the tax returns. For that reason, we provided in § 404.452(b) of our regulations that the filing of tax returns with the IRS was not such a report as is required to be filed for the annual earnings test, even where the tax returns showed the same wages and net earnings from self-employment that must be reported to us for purposes of the annual earnings test. Although SSA was unable to use earnings information from W–2 forms and self-employment tax returns to adjust benefits on a timely basis, we have traditionally used this information as a check to ensure beneficiary compliance with the reporting requirements of the annual earnings test.

Recent improvements in employer reporting practices and in SSA's Annual Wage Reporting (AWR) process have made it feasible and desirable for SSA to change its process for obtaining earnings information from working beneficiaries. For the majority of beneficiaries, information from the W–2 report and/or the self-employment tax return is now processed quickly enough that it is sufficient to serve as the ''annual report'' without need for further action by the beneficiary. Therefore, as part of the ''reinventing government'' initiative and in order to reduce the reporting burden on the public, improve customer service and save administrative costs, we are revising § 404.452 to state that the form W–2 filed by the employer with SSA and/or the self-employment income tax return filed by beneficiaries with IRS may serve as the annual report of earnings. Because of this change, SSA will no longer print and mail Annual Report of Earnings forms. For most beneficiaries, the process will be totally automated, with SSA receiving and processing earnings information reported for tax purposes and using that information in conjunction with other relevant information to adjust the Social Security benefits payable accordingly.

Certain situations will require more information than is contained on the form W–2 and self-employment income tax return. When these situations occur, a beneficiary will still have to contact SSA to provide the information in order to ensure the correct amount of benefits are paid, unless the information was otherwise provided to us. In addition, some beneficiaries may wish to file a report directly with SSA, in order to have their benefits adjusted sooner. (Most adjustments now occur during the period February through May, based on reports filed directly with us, but would take place June through October if based on reports filed through IRS). In these instances, we will accept a report of earnings in writing, in person, or over the telephone, from beneficiaries who still need or wish to file a report.

For example, under IRS regulations, wages are reported on forms W–2 for the year in which they are paid. Under the Social Security earnings test, wages are counted for the year in which services are performed. Therefore, if the form W–2 shows wages that were earned in a year or years prior to the year for which the report is made, e.g., deferred compensation, the beneficiary will need to report to us the correct amount of earnings for the year reported.

There is a similar provision for the self-employed (applicable to years after the initial year of entitlement) that may require contact when no services have been performed in the year for which net earnings from self-employment are reported. Furthermore, in the year in which the monthly earnings test applies (frequently the year of retirement), a beneficiary who has not already done so will need to provide monthly earnings information to SSA that cannot be discerned from the form W–2 or the self-employment income tax return.

Additional examples of situations where other pertinent information must be provided are:

- The beneficiary earned wages above the exempt amount and also had a net loss from self-employment;
- There were wages reported on a W–2 that will be included on a self-employment tax return (e.g., ministers and certain church workers);
- The beneficiary is self-employed and reports earnings on a fiscal year basis which is not the calendar year;
- The beneficiary had Federal agricultural program payments or income from carry-over crops that is included on the SE return;
- The beneficiary estimated earnings over the exempt amount and some benefits were withheld, but there were no earnings for the year, i.e., no wages reported, no self-employment.

SSA already has methods of collecting some of the supplemental information needed to correctly adjust benefits under the earnings test when that information is needed. Much of the information can be gathered in the initial claims process. We also work with employers and payroll groups to have them report directly to us certain payments that should not be counted under the earnings test. We will continue to use these methods as well as develop other means to obtain supplemental information needed to correctly adjust benefits without a separate report of earnings from the beneficiary. We will provide an explanation of the process during the claims interview, and we will provide written information through our public information materials that will allow beneficiaries to understand what earnings should be counted under the earnings test and the situations in which we would need additional information. When we adjust benefits based on the earnings posted to the beneficiary's record, we will, in our notice to the beneficiary, provide full information regarding the earnings that we used and the situations in which those earnings

may not be correct. This will ensure that beneficiaries have full knowledge of our actions. Our notice will also tell beneficiaries how to obtain a reconsideration of our determination if they feel we were wrong, and will advise them of their responsibility to give us any further information that could be pertinent to their benefit adjustment.

It should be noted that we are not revising our regulations regarding extension of time for filing a report (§ 404.452(f)). The deadline for filing employer reports (W–2 forms) is well within the timeframes for required annual reports. In relying on these, as well as the SE tax return information, SSA will assume that posted earnings are based on timely filed reports. However, when a beneficiary requests an extension of time from IRS for filing a self-employment tax return, the beneficiary must either file a timely report of earnings with SSA, or request an extension of time for filing such a report from SSA. An extension granted by IRS will not be considered an extension of time granted by SSA.

This change in our rules will result in improved service to our beneficiaries. First, this final rule will reduce the burden associated with the double filing of information with both SSA and IRS. Second, SSA will be able to shift resources devoted to the solicitation and processing of reports from beneficiaries under the current annual report process to other priority workloads, such as processing claims for benefits and responding to telephone inquiries. Finally, this rule supports the President's request in his remarks on May 22, 1995 on signing the Paperwork Reduction Act of 1995, that agencies review their regulations with the goal of reducing by half the frequency of reports required from citizens. This final rule will eliminate the annual report of earnings form and the need for most working beneficiaries to file a separate report of earnings with SSA, resulting in a savings of up to 330,833 public burden hours each year.

We are also revising paragraphs (a)(1) and (a)(2) of § 404.452 by changing age 72 to age 70. These revisions reflect the statutory change in the Social Security Amendments of 1977 that reduced from age 72 to 70, the age at which beneficiaries become exempt from the annual earnings test. This change was originally scheduled to take effect in 1982 but, due to a provision in the Omnibus Budget Reconciliation Act of 1981, it did not become effective until 1983. Since the statutory provisions were self-implementing, we exempted working beneficiaries age 70 and over from the annual earnings test beginning in 1983. However, we have not previously updated this regulation to take account of this statutory change.

This regulation was published in the **Federal Register** (62 FR 349) as a notice of proposed rulemaking (NPRM) on January 3, 1997. Interested parties were given 30 days to submit comments. No public comments were received. We are, therefore, publishing this final rule with no changes from the proposed rule.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides in 5 U.S.C. 553(d)(1) for an exception to the requirement for a 30-day delay in the effective date of a substantive rule if the rule grants or recognizes an exemption or relieves a restriction. As indicated above, this final rule will eliminate the annual report of earnings form and exempt most working beneficiaries from the requirement to file a separate report of earnings with SSA. This will result in a savings of up to 330,833 public reporting burden hours each year and, by allowing us to divert scarce resources to other priority workloads, enable us to provide better overall service to the public. In light of these considerations, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule and determined that it meets the criteria for a significant regulatory action within the meaning of Executive Order 12866. As indicated earlier in this preamble, failure to file a timely report of earnings will result in a monetary penalty, unless we find that there was good cause for filing late. Since, for most beneficiaries, the W–2 and/or self-employment tax return information will be considered the annual report of earnings required by section 203(f) of the Act, we anticipate that there will be very few penalties imposed on beneficiaries for failing to report their earnings. The loss of penalty dollars is estimated to be $60–75 million for the 5-year period of fiscal years 1997 through 2001. However, we believe that the loss of penalty income should not be given undue consideration because this income results from beneficiaries' failure to timely report their earnings to SSA. It has always been the goal of SSA to achieve maximum reporting compliance and if this goal was achieved, there would be no penalties imposed. Furthermore, we believe that the loss of penalty revenue is more than offset by the benefits that both the public and SSA will realize under this rule. These benefits include the fact that up to 1.3 million beneficiaries will no longer be required to complete the annual report of earnings forms resulting in a reduction in the public reporting burden of up to 330,833 hours. In addition, this initiative will shift the annual report workload from SSA's peak workload period (January through March) until later in the year and thus, will allow SSA to divert scarce resources to other priority workloads, such as processing claims for benefits and responding to telephone inquiries, resulting in better overall service to the public.

Administrative savings for this initiative are estimated to be 540 workyears and $23.2 million for fiscal years 1997 through 2001.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities since it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This final regulation will impose no new reporting or recordkeeping requirements requiring OMB clearance. As indicated in the NPRM, we estimate that this new Annual Report of Earnings process will reduce the annual public reporting burden by up to 330,833 hours. This is the annual reporting burden associated with the completion and filing of forms SSA–777 and SSA–7770 (OMB Control Number 0960–0057). Although this final regulation will eliminate those forms, SSA will continue to collect earnings information, through a number of other collection instruments already approved by OMB. In most cases, we will obtain this information through forms W–2 and schedule SEs approved for use by IRS. In those cases where additional information is required, we expect to obtain that information during the initial claims interview through forms approved for use by SSA (primarily the SSA–1 (Application for Retirement Benefits; OMB Approval Number 0960–0007) and the SSA–795 (Statement of Claimant or Other Person; OMB Approval Number 0960–0045)). In addition, OMB has approved a new

form, SSA–131, OMB Number 0960–0566, to collect the additional information needed to correctly adjust benefits in special wage payment situations.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: March 10, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205 (a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404 (a) and (e), 405 (a) and (c), 422(b), 423(e), 424a, 425, and 902(a)(5)).

2. Section 404.452 is amended by revising paragraphs (a)(1) and (a)(2), revising the last sentence of paragraph (b), and revising paragraph (d) to read as follows:

§ 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment.

(a) * * *

(1) The individual attained the age of 70 in or before the first month of entitlement to benefits in the taxable year, or

(2) The individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which the individual was entitled to benefits and was under age 70.

(b) * * * The filing of an income tax return or a form W–2 with the Internal Revenue Service may serve as the report required to be filed under the provisions of this section where the income tax return or form W–2 shows the same wages and net earnings from self-employment that must be reported to the Administration under this section.

* * * * *

(d) *Information to be provided to us.* The report should show the name and social security claim number of the beneficiary about whom the report is made; identify the taxable year for which the report is made; show the total amount of wages for which the beneficiary rendered services during the taxable year (if applicable), the amount of net earnings from self-employment for such year (if applicable); and show the name and address of the individual making the report. To overcome the presumption that the beneficiary rendered services for wages exceeding the allowable amount and rendered substantial services in self-employment in each month (see § 404.435), we must also be told the specific months in which the beneficiary did not render services in employment for wages of more than the allowable amount (as described in § 404.435) and did not render substantial services in self-employment (as described in §§ 404.446 and 404.447).

* * * * *

[FR Doc. 97–8271 Filed 4–1–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 12

RIN 1076–AD56

Indian Country Law Enforcement

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is establishing standards for Bureau of Indian Affairs (BIA) and tribal law enforcement programs receiving Federal funding or performing duties using a Federal law enforcement commission. These regulations will ensure that law enforcement, crime prevention and recidivism reduction programs are implemented and maintained in a constitutionally sound manner and comply with the Indian Law Enforcement Reform Act of 1990, Public Law 101–379 (25 U.S.C. 2801 *et seq.*).

EFFECTIVE DATE: These regulations take effect on May 2, 1997.

FOR FURTHER INFORMATION CONTACT: The Director, Office of Law Enforcement Services at (505) 248–7937.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Indian Police and Detention Standards regulations were published in 1975 and 1976, respectively, and have not been updated. See 25 CFR Part 12. In 1990, the Indian Law Enforcement Reform Act (Pub. L. 101–379, 25 U.S.C. 2801 *et seq.*) specified changes for the Bureau of Indian Affairs and tribal law enforcement and detention programs to be implemented as rules by the Secretary of the Interior who was given the overall responsibility for providing or assisting in the provision of law enforcement services in Indian country as defined in 18 U.S.C. 1151. Law enforcement appears in Part 12, and Detention and Rehabilitation appears in Part 10, Chapter I of Title 25 Code of Federal Regulations.

The Office of Law Enforcement Services, Bureau of Indian Affairs, is updating and revising the Bureau of Indian Affairs Manual (BIAM), and accompanying operational handbooks that provide policy, procedures, guidelines and standards for all law enforcement programs. The manual and accompanying handbooks will be available to program managers and supervisors, the public, other agencies, and law enforcement officers or investigators. Self-governance tribes with compacts or other tribal entities with enforcement jurisdiction other than the Bureau of Indian Affairs or contracts are encouraged to use the manuals and handbooks for guidance in developing or maintaining their own programs. The Indian Country Detention Facilities and Programs manuals and handbooks may be found in Chapter 69 Bureau of Indian Affairs Manual (BIAM) including an inmate handbook for all individuals who are incarcerated in a BIA or tribal detention facility.

Review of Public Comments

The Nez Perce Tribe expressed several concerns with the proposed rule, many relating to their anticipated contracting of their law enforcement program under self-determination. This rule will not change BIA's relationship with a tribe or any tribe's ability to self-govern. This rule implements the Indian Law Enforcement Reform Act (Pub. L. 101–379) and suggests minimal professional standards for law enforcement officers.

Each of the Nez Perce Tribe's comments are addressed here:

The tribe believes the local superintendent or chief law

enforcement officer should supervise the criminal investigator. Title 25 U.S.C. 2802 stipulates that all BIA criminal investigators must be supervised only by other law enforcement officers of the Division of Law Enforcement. The U.S. Department of Justice has expressed its support for this concept. This does not affect any tribal or contracted criminal investigator, as they are supervised locally.

The tribe feels the minimum guidelines do not ensure the best or most adequate police protection. We agree. They are only the *minimum* standards required for an officer commissioned by or operating under a contract with the BIA. Tribes are encouraged to create their own standards that exceed BIA standards if they desire. Tribes who have contracted their program under self-determination procedures may still determine their own needs and adopt policies reflecting these needs, and adhering to these minimum professional standards should not interfere with that process in any way. This rule only establishes the minimum standards for training and qualifications which should be expected of any professional law enforcement program. This is analogous to any of the 50 United States, which have all adopted minimum standards for their Police Officer Standards and Training (POST) organizations. While each municipality within a State has total control over its own police department, any law enforcement officer employed in that department must meet at least the minimum standards established by that State's POST commission. This rule serves a similar purpose.

The tribe expressed concern that performance, not compliance, should be the basis for denying or rejecting funding for law enforcement programs. We believe the two concepts are directly related. It would not be reasonable to expect an untrained or otherwise unqualified law enforcement officer to perform his/her duties at an adequate level. Local community residents should certainly expect officers working in their community to be professional and to meet at least these minimum standards.

The tribe asks for specifics on how the BIA will interpret tribal law. This rule requires tribal permission for BIA officers to enforce tribal law, and encourages local arrangements and agreements. We firmly believe these decisions should be made at the local level whenever possible.

The tribe expressed its belief that tribes should manage their own budgets. We agree, and nothing in this rule would prevent that.

The tribe commented on the requirement for a successful background investigation on law enforcement officers by indicating tribes should be able to make law enforcement program decisions based on their own unique needs. We agree, but do not believe that should include employing a law enforcement officer with a criminal history or who is otherwise unsuitable as a law enforcement officer. We believe the successful completion of a background investigation is an entirely reasonable requirement for any law enforcement officer in any jurisdiction. Again, this reflects similar standards adopted by all 50 United States, and mirrors requirements in the Reform Act. The Department of Justice has expressed its support for this concept, and included this requirement in the agreement between the Attorney General and Secretary of the Interior regarding the investigation and prosecution of crime in Indian country.

The tribe expressed a belief that any reasonable code of conduct can work, but it must be enforced consistently. We agree.

The tribe stated its belief that BIA should monitor officer misconduct; that if the tribe is the supervisor, it must have the ability to impose sanctions for misconduct; and that BIA should provide investigative assistance and support. We agree with the tribe on these issues and this rule supports the tribe fully in this regard.

Many of the tribe's comments are directed at some of the basic concepts of the Indian Law Enforcement Reform Act, specifically establishment of standards for law enforcement officers and procedures for the professional supervision of BIA criminal investigators. BIA is extremely sensitive to these concerns and will continue to work closely with all tribes on a government-to-government basis on law enforcement and other issues.

Evaluation and Certification

Executive Order 12988

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

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this rule does not have significant takings implications. The rule does not pertain to ''taking'' of private property interests, nor does it affect private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information: The primary author of this document is Mark Mullins, Bureau of Indian Affairs, Office of Law Enforcement Services.

List of Subjects in 25 CFR Part 12

Indians—residential and holding facilities, Law enforcement.

For the reasons given in the preamble Part 12, Chapter I of Title 25 of the Code of Federal Regulations is revised to read as follows:

PART 12—INDIAN COUNTRY LAW ENFORCEMENT

Subpart A—Responsibilities

Sec.

12.1 Who is responsible for the Bureau of Indian Affairs law enforcement function?
12.2 What is the role of the Bureau of Indian Affairs Director of Law Enforcement Services?
12.3 Who supervises Bureau of Indian Affairs criminal investigators?
12.4 Who Supervises the Bureau of Indian Affairs uniformed police, detention, and conservation enforcement functions?

Subpart B—Policies and Standards

12.11 Do I have to follow these regulations?
12.12 What about self-determination?
12.13 What happens if I do not follow the rules in this part?

12.14 Where can I find specific policies and standards for law enforcement functions in Indian country?

Subpart C—Authority and Jurisdiction

12.21 What authority is given to Indian country law enforcement officers to perform their duties?
12.22 Can Bureau of Indian Affairs law enforcement officers enforce tribal laws?
12.23 What are the jurisdictional limits in Indian country?

Subpart D—Qualifications and Training Requirements

12.31 Are there any minimum employment standards for Indian country law enforcement personnel?
12.32 Do minimum employment standards include a background investigation?
12.33 Are Indian country law enforcement officers paid less than other law enforcement officers?
12.34 Do minimum salaries and position classifications apply to a tribe that has contracted or compacted law enforcement under self-determination?
12.35 Do Indian country law enforcement officers complete any special training?
12.36 Does other law enforcement training count?

Subpart E—Records and Information

12.41 Who keeps statistics for Indian country law enforcement activities?
12.42 Do Indian country law enforcement programs share information with their own communities or other agencies?

Subpart F—Conduct

12.51 Must Indian country law enforcement officers follow a code of conduct?
12.52 How do I report misconduct?
12.53 Who investigates officer misconduct?
12.54 What can I do if I believe my civil rights have been violated?
12.55 Are there any limits on how much force an officer can use when performing law enforcement duties?

Subpart G—Support Functions

12.61 Can I be paid for information that helps solve a crime?
12.62 Who decides what uniform an Indian country law enforcement officer can wear and who pays for it?
12.63 Do Indian country law enforcement officers perform other duties as well?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 2417, 2453, and 2802.

Subpart A—Responsibilities

§ 12.1 Who is responsible for the Bureau of Indian Affairs law enforcement function?

The Commissioner of Indian Affairs, or in the absence of a Commissioner, the Deputy Commissioner, is responsible for Bureau of Indian Affairs-operated and contracted law enforcement programs, and for overall policy development and implementation of the Indian Law Enforcement Reform Act, Public Law 101–379 (25 U.S.C. 2801 *et seq.*).

§ 12.2 What is the role of the Bureau of Indian Affairs Director of Law Enforcement Services?

The Director of the Office of Law Enforcement Services for the Bureau of Indian Affairs (Director) has been delegated the responsibility for the development of law enforcement and detention policies, standards, and management of all Bureau of Indian Affairs (BIA) criminal investigations, drug enforcement, training, internal affairs, inspection and evaluation, emergency response forces, and other national level Indian country law enforcement initiatives. The Director publishes these policies and standards in law enforcement manuals and handbooks. The Director is also directly responsible for developing crime prevention and outreach programs within Indian country law enforcement.

§ 12.3 Who supervises Bureau of Indian Affairs criminal investigators?

All BIA criminal investigators are supervised by other criminal investigators within the Office of Law Enforcement Services.

§ 12.4 Who supervises the Bureau of Indian Affairs uniformed police, detention, and conservation enforcement functions?

The agency superintendent is directly responsible for the operation and management of BIA uniformed police operations, detention facilities, and conservation enforcement operations at any agency having these programs. The agency superintendent must also ensure technical support is provided to any agency contracting the law enforcement and/or detention program.

Subpart B—Policies and Standards

§ 12.11 Do I have to follow these regulations?

You must follow the minimum standards outlined in the regulations in this part if you are part of a BIA or tribal law enforcement program receiving Federal funding or operating under a BIA law enforcement commission.

§ 12.12 What about self-determination?

The regulations in this part are not intended to discourage contracting of Indian country law enforcement programs under the Indian Self-determination and Education Assistance Act (Pub. L. 93–638, as amended, 25 U.S.C. 450). The Deputy Commissioner of Indian Affairs will ensure minimum standards are maintained in high risk activities where the Federal government retains liability and the responsibility for settling tort claims arising from contracted law enforcement programs. It is not fair to law abiding citizens of Indian country to have anything less than a professional law enforcement program in their community. Indian country law enforcement programs that receive Federal funding and/or commissioning will be subject to a periodic inspection or evaluation to provide technical assistance, to ensure compliance with minimum Federal standards, and to identify necessary changes or improvements to BIA policies.

§ 12.13 What happens if I do not follow the rules in this part?

Your BIA law enforcement commission may be revoked, your law enforcement contract may be canceled, and you may no longer be eligible for tribal shares allocated from the law enforcement budget.

§ 12.14 Where can I find specific policies and standards for law enforcement functions in Indian country?

BIA will ensure that all Indian country law enforcement programs are provided a copy of the most current policy manuals and handbooks. Every Indian country law enforcement program covered by the regulations in this part must maintain an effective and efficient law enforcement program meeting minimal qualitative standards and procedures specified in Chapter 68 Bureau of Indian Affairs Manual (BIAM) and the Law Enforcement Handbook.

Subpart C—Authority and Jurisdiction

§ 12.21 What authority is given to Indian country law enforcement officers to perform their duties?

BIA law enforcement officers are commissioned under the authority established in 25 U.S.C. 2803. BIA may issue law enforcement commissions to other Federal, State, local and tribal full-time certified law enforcement officers to obtain active assistance in enforcing applicable Federal criminal statutes, including Federal hunting and fishing regulations, in Indian country.

(a) BIA will issue commissions to other Federal, State, local and tribal full-time certified law enforcement officers only after the head of the local government or Federal agency completes an agreement with the Commissioner of Indian Affairs asking that BIA issue delegated commissions. The agreement must include language that allows the BIA to evaluate the effectiveness of these special law enforcement commissions and to investigate any allegations of misuse of authority.

(b) Tribal law enforcement officers operating under a BIA contract or compact are not automatically

commissioned as Federal officers; however, they may be commissioned on a case-by-case basis.

§ 12.22 Can Bureau of Indian Affairs law enforcement officers enforce tribal laws?

BIA officers will enforce tribal laws only with the permission of the tribe. Local programs are encouraged to make arrangements and agreements with local jurisdictions to facilitate law enforcement objectives.

§ 12.23 What are the jurisdictional limits in Indian country?

The Department of the Interior and the Department of Justice must maintain and periodically review and update a memorandum of understanding describing the relationship between the Federal Bureau of Investigation and the Bureau of Indian Affairs in the investigation and prosecution of major crimes in Indian country. Any law enforcement programs performing duties under the authority of 25 U.S.C. 2803 must follow the guidelines in the memorandum of understanding and any local United States Attorney's guidelines for the investigation and prosecution of Federal crimes.

Subpart D—Qualifications and Training Requirements

§ 12.31 Are there any minimum employment standards for Indian country law enforcement personnel?

The Director must develop, maintain, and periodically review the qualification standards, including medical qualification standards, for all BIA law enforcement, detention, and conservation enforcement occupational series. The standards will be no less stringent than the minimum standards established by the U.S. Office of Personnel Management (OPM) for these occupational series, and may exceed the OPM standards. BIA standards are available for review at any BIA personnel office. All tribal programs are encouraged to develop standards at least as stringent as those established for BIA officers.

§ 12.32 Do minimum employment standards include a background investigation?

Law enforcement authority is only entrusted to personnel possessing adequate education and/or experience, training, aptitude, and high moral character. All Indian country law enforcement programs receiving Federal funding and/or authority must ensure that all law enforcement officers successfully complete a thorough background investigation no less stringent than required of a Federal officer performing the same duties. The background investigations of applicants and employees must be adjudicated by trained and qualified security professionals. All background investigations must be documented and available for inspection by the Bureau of Indian Affairs.

§ 12.33 Are Indian country law enforcement officers paid less than other law enforcement officers?

An officer's pay is determined by his/her grade and classification. The Commissioner of Indian Affairs must ensure that all BIA law enforcement officer positions are established at no lower grade level on the Federal scale than similar Federal law enforcement officer positions in other agencies. No BIA position performing commissioned law enforcement duties will be classified in other than the GS 0083, police officer series, for uniformed officers and the GS 1811, criminal investigating series, for criminal investigators.

§ 12.34 Do minimum salaries and position classifications apply to a tribe that has contracted or compacted law enforcement under self-determination?

Any contract or compact with the BIA to provide law enforcement services for an Indian tribe must require a law enforcement officer to be paid at least the same salary as a BIA officer performing the same duties.

§ 12.35 Do Indian country law enforcement officers complete any special training?

Law enforcement personnel of any program funded by the Bureau of Indian Affairs must not perform law enforcement duties until they have successfully completed a basic law enforcement training course prescribed by the Director. The Director will also prescribe mandatory supplemental and in-service training courses.

§ 12.36 Does other law enforcement training count?

All requests for evaluation of equivalent training must be submitted to the Indian Police Academy for review, with final determination made by the Director. Requests for a waiver of training requirements to use personnel before completing the required courses of instruction must be submitted to the Director and approved or disapproved by the Commissioner of Indian Affairs. In no case will such a waiver allow personnel to be used in any position for more than one year without achieving training standards. Failure to complete basic training requirements will result in removal from a law enforcement position.

Subpart E—Records and Information

§ 12.41 Who keeps statistics for Indian country law enforcement activities?

The Director maintains a criminal justice information system for Indian country. The Director will prescribe the types of data to be collected and the reporting format to be used to collect information and assemble reports on crime reported in Indian country. These reports may be provided to the Department of Justice. Any law enforcement program receiving funding from the BIA must use the same reporting format and submit the same statistical reports to the Office of Law Enforcement Services as prescribed by the Director and as are required of all BIA law enforcement programs.

§ 12.42 Do Indian country law enforcement programs share information with their own communities or other agencies?

At intervals established by the Director, each BIA criminal investigations program, and any investigations program receiving BIA funds will consult with local tribal leaders and managers of local patrol and detention programs. They will discuss the quality of the local investigations program and offer feedback and technical assistance. There will be no requirement to disclose confidential investigative information or to compromise ongoing investigations during this process.

Subpart F—Conduct

§ 12.51 Must Indian country law enforcement officers follow a code of conduct?

All law enforcement programs receiving Bureau of Indian Affairs funding or commissioning must establish a law enforcement code of conduct which establishes specific guidelines for conduct on and off duty, impartiality, and professional conduct in the performance of duty, and acceptance of gifts or favors. Each officer must acknowledge in writing receiving and understanding of this code of conduct. The acknowledgment will remain on file with the law enforcement program manager as long as the officer is employed there. Training will be conducted on this code of conduct and other ethics issues at least once each year.

§ 12.52 How do I report misconduct?

The Director will develop and maintain a reporting system that allows any resident of or visitor to Indian country to report officer misconduct. Each law enforcement program in Indian country will maintain

instructions on how to register a complaint. An overview of these steps must be posted for public viewing at each law enforcement facility in Indian country.

§ 12.53 Who investigates officer misconduct?

The Director, Office of Law Enforcement Services maintains an internal affairs program that investigates all allegations of misconduct by BIA officers, and any officer receiving funding and/or authority from the BIA. All allegations of misconduct must be thoroughly investigated and appropriate action taken when warranted. Any person having knowledge of officer misconduct must report that information to the officer's supervisor. The supervisor must immediately report allegations to the internal affairs unit. Depending upon the severity of the allegation, the matter may be dealt with locally or it will be investigated by the internal affairs unit. Failure of any BIA employee to report known allegations may be considered misconduct in itself. Citizens may report officer misconduct directly to the internal affairs unit if that is more practical.

§ 12.54 What can I do if I believe my civil rights have been violated?

All allegations of civil rights violations must be reported immediately to the internal affairs unit. That office will ensure that allegations are immediately reported to the Civil Rights Division of the U. S. Department of Justice through established procedures. BIA's internal affairs unit may also investigate the matter and make recommendations for additional action as necessary.

§ 12.55 Are there any limits on how much force an officer can use when performing law enforcement duties?

The Director will develop and maintain the use of force policy for all BIA law enforcement personnel, and for programs receiving BIA funding or authority. Training in the use of force, to include non-lethal measures, will be provided annually. All officers will successfully complete a course of instruction in firearms, to include judgement pistol shooting, approved by the Indian Police Academy before carrying a firearm on or off duty.

Subpart G—Support Functions

§ 12.61 Can I be paid for information that helps solve a crime?

The Director can spend money to purchase evidence or information, or to offer a reward, in the investigation of a crime. This is subject to the availability of funds. This authority may be delegated in writing to supervisory criminal investigators within the Office of Law Enforcement Services in the BIA. The Director must develop policies and procedures for the expenditure, control, and audit of these funds before their use.

§ 12.62 Who decides what uniform an Indian country law enforcement officer can wear and who pays for it?

Each local law enforcement program must establish its own uniform requirements for patrol and detention personnel. Uniformed BIA police officers may be paid an annual uniform allowance not to exceed $400. Local programs may provide uniforms and related equipment to officers in lieu of this payment. All law enforcement officers must also have their official identification on their person at all times when performing law enforcement duties. Uniforms, when worn, will be plainly distinguishable from the uniforms of any non-law enforcement personnel working on the reservation.

§ 12.63 Do Indian country law enforcement officers perform other duties as well?

Law enforcement commissions will only be issued by the Bureau of Indian Affairs to persons occupying positions as full-time officers. Bureau of Indian Affairs funded or commissioned criminal investigators will not be responsible for supervising or managing any patrol, detention, or other uniformed police programs.

Dated: March 24, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–8341 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Program

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending three exemption rules. The administrative amendments consist of deleting the exemption rule for N04385-1 (system was consolidated into N05041-1); changing the system name of N05520-5; and changing the system identifier for N04385-2 to N05512-2 and deleting subsections (k)(5), (k)(6), and (k)(7) from the exemption rule.

EFFECTIVE DATE: April 2, 1997.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Navy is amending three exemption rules published in 32 CFR part 701, subpart G. The administrative amendments consist of deleting the exemption rule for N04385-1 (system was consolidated into N05041-1); changing the system name of N05520-5; and changing the system identifier for N04385-2 to N05512-2 and deleting subsections (k)(5), (k)(6), and (k)(7) from the exemption rule.

List of Subjects in 32 CFR Part 701

Privacy.

1. The authority citation for 32 CFR part 701, subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by removing and reserving paragraph (h), and revising paragraph (i), and revising the heading and introductory text of paragraph (n) as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(h) *[Reserved].*

(i) *System identifier and name:* N05041–1, Inspector General (IG) Records.

(1) *Exemption:* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(2) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(2).

(3) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would permit individuals to obtain valuable information concerning the nature of the investigation and would present a serious impediment to the orderly conduct of any investigative activities. Such accounting could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From subsections (d) and (f) because access to the records would inform individuals of the existence and nature of the investigation; provide information that might result in the concealment, destruction, or fabrication of evidence; possibly jeopardize the safety and well-being of informants, witnesses and their families; likely reveal and render ineffectual investigatory techniques and methods and sources of information; and possibly result in the invasion of the personal privacy of third parties. Access could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with the ongoing investigation and impose an impossible administrative burden by requiring investigations to be continually reinvestigated.

(iii) From subsection (e)(1) because in the course of the investigation it is not always possible, at least in the early stages of the inquiry, to determine relevance and or necessity as such determinations may only occur after the information has bee evaluated. Information may be obtained concerning the actual or potential violation of laws or regulations other than those relating to the ongoing investigation. Such information should be retained as it can aid in establishing patterns of improper activity and can provide valuable leads in the conduct of other investigations.

(iv) From subsection (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (k)(1) and (k)(2) of the Privacy Act of 1974.

(v) From subsection (e)(4)(I) because it is neccessary to protect the confidentiality of sources and to protect the privacy and physical safety of witnesses. Although the system is exempt from this requirement, the Department of the Navy has published a notice in broad, generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires.

* * * * *

(n) *System identifier and name:* N05520–5, Personnel Security Program Management Records System. * * *

Dated: March 26, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–8138 Filed 3–31–97; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300464; FRL–5597–2]

RIN 2070-AC78

Propamocarb Hydrochloride; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the fungicide propamocarb hydrochloride in or on the raw agricultural commodities potatoes, milk; and meat, meat by-products, and fat of cattle, goat, horse, sheep, and hogs in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of propamocarb hydrochloride on potatoes in the states of California, and Texas. This regulation establishes maximum permissible levels for residues of propamocarb hydrochloride in these foods pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked by EPA on March 15, 1999.

DATES: This regulation becomes effective April 2, 1997. Objections and requests for hearings must be received by EPA on or before June 2, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300464], 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 document control number, [OPP–300464], must also 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 Hwy., Arlington, VA. 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 control number [OPP–300464]. 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: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-8326, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of propamocarb hydrochloride on potatoes at 0.5 parts per million (ppm) and in milk; and meat, meat by-products, and fat of cattle, goat, horse, sheep, and hogs at 0.1

ppm. These tolerances will expire on March 15, 1999.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (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. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

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 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166. Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Propamocarb Hydrochloride on Potatoes and FFDCA Tolerances

EPA has authorized use under FIFRA section 18 of propamocarb hydrochloride on potatoes for control of late blight. Recent failures to control late blight in potatoes as well as tomatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight (Phytophthora infestans), which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with metalaxyl. Presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. After having reviewed their submission, EPA concurs that an emergency condition exists.

As part of its assessment of these specific exemptions, EPA assessed the potential risks presented by residues of propamocarb hydrochloride on potatoes and milk; and meat, meat by-products, and fat of cattle, goat, horse, sheep, and hogs. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for residues of propamocarb hydrochloride will permit the marketing of potatoes treated in accordance with the provisions of the section 18 emergency exemptions and the marketing of milk; and meat, meat by-products, and fat of cattle, goat, horse, sheep, and hogs with secondary residues resulting from the feeding of the feedstuffs of treated potatoes. Consistent with the need to move quickly on these emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked by EPA on March 15, 1999, under FFDCA section 408(l)(5), residues of propamocarb hydrochloride not in excess of the amount specified in these tolerances remaining in or on potatoes and milk; and meat, meat by-products, and fat of cattle, goat, horse, sheep, and hogs after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicates that the residues are not safe.

EPA has not made any decisions about whether propamocarb hydrochloride meets the requirements for registration under FIFRA section 3 for use on potatoes or whether a permanent tolerance for propamocarb hydrochloride for potatoes and milk; and meat, meat by-products, and fat of cattle, goat, horse, sheep, and hogs would be appropriate. This action by EPA does not serve as a basis for registration of propamocarb hydrochloride by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than California, Texas and States which are subsequently granted specific exemptions for this use to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for propamocarb hydrochloride, contact the

Agency's Registration Division at the address provided above.

III. 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 (the ''no-observed effect level'' or ''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 appreciable 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% 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, FFDCA section 408 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% 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.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of these actions. Propamocarb hydrochloride is registered by EPA for turf and ornamental use. EPA believes it has sufficient data to assess the hazards of propamocarb hydrochloride and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of propamocarb hydrochloride on potatoes at 0.5 parts per million (ppm) and in milk; and meat, meat by-products, and fat of cattle, goat, horse, sheep, and hogs at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity*. Based on the available chronic toxicity data, EPA's Office of Pesticide Programs (OPP) has established the RfD for propamocarb hydrochloride at 0.11 milligrams (mg)/kilograms (kg)/day. The RfD was established based on a threshold LOEL (lowest observable effect level) of 33.31 mg/kg/day in males and 33.27 mg/kg in females in a 11–year dog feeding study. The LOEL was based on body weight gain depression, decreased food efficiency and gastritis. An uncertainty factor (UF) of 100 was used to account for both inter-species extrapolation and intra-species variability. An additional UF of 3 was used to account for the lack of a NOEL.

2. *Acute toxicity*. Agency toxicologists have recommended that the developmental NOEL of 150 mg/kg/day from the rabbit developmental toxicity study be used for acute dietary risk calculations. The developmental LOEL of 300 mg/kg/day is based on increased post-implantation loss (developmental) and decreased body weight gain (maternal). The population of concern for this risk assessment is females 13+ years old.

3. *Short-term non-dietary inhalation and dermal toxicity*. OPP recommends use of the developmental toxicity study in rabbits for short- and intermediate term MOE calculations. The maternal NOEL was 150 mg/kg/day and the LOEL of 300 mg/kg/day was based on decreased body weight gain during gestation days 6-18. The developmental NOEL was 150 mg/kg/day. The developmental LOEL of 300 mg/kg/day was based on increased post-implantation loss.

4. *Carcinogenicity*. Propamocarb hydrochloride is classified as a ''Group D,'' not classifiable as to human carcinogenicity due to inadequacy of the data. Dietary rodent studies conducted in 1983 in Germany showed no evidence of carcinogenicity. The registrant is currently conducting studies in accordance with U.S. protocols.

B. Aggregate Exposure

There are no established U.S. tolerances for propamocarb hydrochloride, and there are no registered uses for propamocarb hydrochloride on food or feed crops in the United States.

For the purpose of assessing chronic dietary exposure from propamocarb hydrochloride, EPA assumed tolerance level residues and 100% of crop treated for the proposed use of propamocarb hydrochloride. These conservative assumptions result in overestimation of human dietary exposures.

In examining aggregate exposure, FQPA directs EPA to consider available

information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

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

Based on the available studies used in EPA's assessment of environmental risk, propamocarb hydrochloride is relatively non-persistent and mobility varies as a function of soil texture and soil reaction. There is no entry for propamocarb hydrochloride in the ''Pesticides in Groundwater Data Base'' (EPA 734-12-92-001, September 1992). There is no established Maximum Concentration Level (MCL) for residues of propamocarb hydrochloride in drinking water. No drinking water health advisory levels have been established for propamocarb hydrochloride.

Propamocarb hydrochloride is registered for uses, such as lawn and ornamental, that could result in non-occupational exposure and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational, non-dietary exposure scenarios. At this time, the Agency has insufficient information to assess the potential risks from such exposure. However, available data for propamocarb hydrochloride indicate no evidence of toxicity by the dermal or inhalation routes.

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.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although 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 with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun 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 increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether propamocarb hydrochloride has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, propamocarb hydrochloride does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that propamocarb hydrochloride has a common mechanism of toxicity with other subtances.

C. Safety Determinations For U.S. Population

Taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to propamocarb hydrochloride in food from published tolerances will utilize 2% of the RfD for the U.S. population. A dietary (food only) MOE of greater than 118 would not be of Agency concern. A MOE of 30,000 was calculated.

EPA does not believe exposure to propamocarb hydrochloride in drinking water or from residential uses would raise the percent of RfD utilized or lower the MOE, to such extent that there was not an adequate margin of exposure. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause propamocarb hydrochloride to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with propamocarb hydrochloride in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted. An appropriate bounding figure for residential exposure is expected to be lower than for drinking water. Therefore, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propamocarb hydrochloride residues.

D. Determination of Safety for Infants and Children.

FFDCA section 408 provides that EPA shall apply an additional ten-fold

margin of exposure (safety) for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. EPA believes that reliable data support using the standard margin of exposure (usually 100x for combined inter- and intra-species variability)) and not the additional ten-fold margin of exposure when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin of exposure. Based on current toxicological data requirements, the data base for propamocarb hydrochloride relative to pre- and post-natal toxicity is not complete.

The pre- and post-natal toxicology data base for propamocarb is not complete with respect to current toxicological data requirements. Although two acceptable prenatal developmental toxicity studies (in rats and rabbits) have been submitted to the Agency, the available rat reproductive toxicity study is not adequate. The RfD Committee considered it to be supplementary and not upgradeable based on the lack of systemic toxicity at dose levels, which did not achieve the limit dose, indicating inadequacy of the high dose for reproductive toxicity. Thus conclusions concerning post-natal sensitivity cannot be made.

In the developmental toxicity study in rabbits, the developmental and maternal NOELs were both 150 mg/kg/day. The developmental and maternal LOELs of 300 mg/kg/day were based on increased post-implantation loss (developmental) and decreased body weight gain (maternal). The NOELs and LOELs occurred at the same doses for developmental and maternal findings; there was no indication of pre-natal sensitivity for infants and children.

In the developmental toxicity study in rats, the developmental NOEL was 221 mg/kg/day and was below the maternal NOEL (740 mg/kg/day). The developmental LOEL of 740 mg/kg/day was based on increased fetal death, and an increased incidence of minor skeletal anomalies (incomplete ossification of some vertebrae and sternebrae). The maternal NOEL was 740 mg/kg/day, based on increased maternal death, spastic gait and decreased body weight at the LOEL of 2,210 mg/kg/day. These findings indicate the possibility of increased prenatal sensitivity of fetuses to *in utero* exposure to propamocarb. An additional uncertainty factor of 10x for infants and children would be deemed appropriate for propamocarb, based upon the lack of data to evaluate postnatal exposure (due to the inadequate reproduction study) and based upon the increased sensitivity to prenatal exposure (indicated by the rat developmental study NOELs). However, considering the large dietary MOE calculated for females 13+ years (MOE = 30,000), even if an additional ten-fold uncertainty factor were applied, aggregate acute risk estimates would not exceed the margin of exposure. Therefore, EPA concludes that this tolerance will pose reasonable certainty of no harm to infants and children.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary (food) exposure to residues of propamocarb hydrochloride ranges from 2% for nursing infants (<1 year old) up to 7% for non-nursing infants (<1 year old). However, this calculation assumes tolerance level residues for all commodities and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. The addition of potential exposure from propamocarb hydrochloride residues in drinking water is not expected to result in an exposure which would exceed the RfD.

V. Other Considerations

The metabolism of propamocarb hydrochloride in potatoes is adequately understood for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of propamocarb hydrochloride. The residue of concern, for the purposes of this tolerance, is propamocarb hydrochloride. The proposed enforcement method designated UPSR 22/91 (MRID No. 439840-04) submitted with petition 6F4707 is adequate to support the proposed time-limited tolerances. The method has been adequately radiovalidated for recovery of parent compound; however, an independent laboratory validation has not been submitted. Further the method has not undergone Agency method validation. 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.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of propamocarb hydrochloride in or on potatoes at 0.5 parts per million (ppm) and in milk; and meat, meat by-products, and fat of cattle, goat, horse, sheep, and hogs at 0.1 ppm. These tolerances will expire and be revoked by EPA on March 15, 1999.

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 new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which 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 those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 2, 1997, file written objections to any aspect of this regulation (including the 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–300464]. 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 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.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled *Enhancing the Intergovernmental Partnership*, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerances, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact (46 FR 24950, May 4, 1981).

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 this 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: March 17, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding § 180.499 to read as follows:

§ 180.499 Propamocarb hydrochloride, tolerances for residues.

Time-limited tolerances are established for residues of the fungicide propamocarb hydrochloride in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances expire and will be revoked on the date specified in the table by EPA.

Commodity	Parts per million	Expiration/ Revocation Date
Potatoes	0.5	March 15, 1999
Cattle, fat	0.1	March 15, 1999
Cattle, meat	0.1	March 15, 1999
Cattle, mbyp (except kidney and liver)	0.1	March 15, 1999
Goats, fat	0.1	March 15, 1999
Goats, meat	0.1	March 15, 1999
Goats, mbyp (except kidney and liver)	0.1	March 15, 1999
Hogs, fat	0.1	March 15, 1999
Hogs, meat	0.1	March 15, 1999
Hogs, mbyp (except kidney and liver)	0.1	March 15, 1999
Horse, fat	0.1	March 15, 1999
Horse, meat	0.1	March 15, 1999
Horse, mbyp (except kidney and liver)	0.1	March 15, 1999
Sheep, fat	0.1	March 15, 1999
Sheep, meat	0.1	March 15, 1999
Sheep, mbyp (except kidney and liver)	0.1	March 15, 1999
Milk	0.1	March 15, 1999

[FR Doc. 97–8387 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

RIN 2105–AC25

Nonprocurement Debarment and Suspension

ACTION: Final rule.

DATES: This document is effective April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the General Counsel, C–10, Room 10102, (202) 366–9161, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 1995 the Department of Transportation joined in the governmentwide common rule on

debarment and suspension (nonprocurement) and requirements for a drug-free workplace, 60 FR 33036. The Department issued an interim final rule at that time. The rule is codified at Part 29 of Title 49 of the Code of Federal Regulations.

The Department held a one month comment period on the interim final rule. The comment period is now closed and we received no comment. Consequently, the rule will remain in effect without change.

List of Subjects in 49 CFR Part 29

Administrative practice and procedure, Contract programs, Drug abuse, Grant programs, Loan programs, Reporting and record keeping requirements.

Dated: March 27, 1997.

Melissa Spillenkothen,

Assistant Secretary for Administration, U.S. Department of Transportation.

[FR Doc. 97–8405 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 62, No. 63
Wednesday, April 2, 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

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AE94

Sugar Loan Program Crop Year Definition and Loan Availability Period

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would redefine the crop year for the sugar loan program from the current period, July 1 through June 30, to the Federal fiscal year, October 1 through September 30. The proposed rule also would extend the loan availability period to the whole fiscal year instead of ending the availability period on June 30. The restriction that the Commodity Credit Corporation (CCC) could only make loans in July, August, and September on sugar processed from sugarcane or sugar beets that are normally harvested in those months would be removed. The proposed rule would also eliminate obsolete provisions governing the 1995 crop year price support program and producer protections and revise the information collection requirements to reflect the simplified monthly data-reporting forms and the transfer of reporting items to new annual reporting forms.

DATES: Comments on this rule must be received on or before June 2, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Daniel Colacicco, Farm Service Agency, United States Department of Agriculture (USDA) STOP 0516, 1400 Independence Avenue, SW, Washington, DC 20250–0516, telephone 202–690–0734.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this proposed rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

An Environmental Evaluation with respect to the proposed rule has been completed. It has been determined that this action will not have significant adverse effects on environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

Title: 7 CFR Part 1435, Sugar Program.

OMB Number: 0560–0138.

Date of Approval Expiration: July 31, 1998.

Type of Request: Revision of previously approved information collection.

Abstract: The Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) requires the Department of Agriculture to collect and publish, on a monthly basis, information as the Secretary may require to administer sugar programs, including sales of sugarcane, sugar beets, and sugar, and production, importation, distribution, and stock levels of sugar. The Farm Service Agency uses these data to estimate supply and use for the monthly World Agricultural Supply and Demand Estimates report; establish regional sugar loan rates; estimate the impact of alternative sugar policy options on the sugar market; and publish the monthly Sweetener Market Data report.

Estimate of Respondent Burden: Public reporting burden for the revised collection of information is estimated to average 56 minutes per response.

Respondents: Domestic sugarcane processors, sugar beet processors, and cane sugar refiners.

Estimated Number of Respondents: 49.

Estimated Number of Responses per Respondent: 19 responses per year.

Estimated Total Annual Burden Hours on Respondents: 864 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information from those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503, and to Dan Colacicco, Economic and Policy Analysis Staff, FSA, USDA, STOP 0516, 1400 Independence Avenue, SW, Washington, DC 20250–0516, (202)690–0734.

Copies of the information collection package may be obtained from Fran Hentz, Economic Policy Analysis Staff, FSA, USDA, STOP 0516, 1400 Independence Avenue, SW, Washington, DC 20250–0516, (202)720–7794.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations 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 of Agriculture on the proposed regulation.

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Executive Order 12998

This proposed rule has been reviewed in accordance with Executive Order 12998. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this proposed rule; are not retroactive; and are not subject to administrative appeal remedies.

Background

Paragraph 1435.1(a), which governs the price support loan program and producer protections for the 1995 crop year, is eliminated. The 1995 crop year ended on June 30, 1996, and all 1995 crop year loans were repaid to CCC before October 1, 1996.

Sugar Crop Year Definition

The current CCC regulations at § 1435.2 define the sugar crop year as ''the period from July 1 through June 30, inclusive''. The current July-June crop year is a carry-over from the implementation of the Agriculture and Food Act of 1981, which mandated a purchase program and a subsequent price support loan program.

Redefining the crop year to the period October 1 through September 30 would: (1) be consistent with the fiscal year, thus providing a better fit for the analysis and administration of the sugar program, (2) reduce the reporting burden placed on the industry, and (3) better reflect the beginning of the harvest, which is the basis for other commodities' crop years.

USDA already uses the fiscal year for the sugar World Agricultural Supply and Demand Estimates and baseline budget estimates. The tariff-rate import quota (TRQ) and marketing assessment rates are specified in terms of fiscal years, and the final loan maturity date is September 30, the end of the fiscal year.

Changing the crop year definition is expected to reduce the industry's reporting burden and costs because they will no longer have to provide separate crop year and fiscal year data to USDA.

The 1996 Act authorizes a sugar program through the 2002 crop year. Under the current crop year definition, the program would apply only to sugar processed through June 30, 2003. Changing the crop year definition to the fiscal year that ends on September 30 cannot change the end of loan program authority. Thus, the revised rule would reaffirm that the loan program expires on June 30, 2003.

Loan Availability Period and Supplemental Loans

Under current regulations, the loan availability period ends June 30, which is consistent with the end of the current July-June crop year and similar to the other commodities in terms of the number of months loans are available after the beginning of harvest. However, loans are made available during the July-September period on sugar from sugar beets and sugarcane ''normally harvested'' during the July-September period. Sugar pledged as collateral for a loan during this period may be repledged as collateral for a supplemental loan during the following fiscal year for up to 9 months minus the number of months the initial loan was in effect.

The Agricultural Act of 1949 (1949 Act), as amended by the Food, Agriculture, Conservation, Trade Act of 1990, specified that the Secretary shall make available to eligible processors price support loans with respect to sugar processed from sugar beets and sugarcane harvested in the last 3 months of a fiscal year, with supplemental loans available the following fiscal year for up to 9 months minus the length of the initial loan. However, the 1996 Act, which supersedes the 1949 Act, provides only that in the case of a loan made during the last 3 months of a fiscal year, the collateral may be repledged for a supplemental loan during the following fiscal year for up to 9 months minus the length of the initial loan. Thus, the 1996 Act eliminates the restriction that only sugar from sugar beets or sugarcane harvested in the July-September period is eligible for a loan during that period.

Extending the loan availability period through the entire fiscal year and providing supplemental loans to all sugar originally pledged for loans during the July-September period would: (1) Simplify program regulations and administration (e.g., by eliminating continuous harvest loan applications), (2) increase industry flexibility by providing loans year-round, thus increasing its ability to store sugar in anticipation of better prices, (3) be more consistent with other sugar program provisions, and (4) recognize the impact of desugarization technology.

All loans would be made at the loan rates in effect at the time the loans are made. Sugar repledged for loans during the July-September period would continue to be ineligible for supplemental loans.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price-support programs, Reporting and record keeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is proposed to be amended as follows:

PART 1435—SUGAR

1. The authority citation for 7 CFR part 1435 continues to read as follows:

Authority: 7 U.S.C. 7272 and 15 U.S.C. 714b and 714c.

2. Section 1435.1 is amended by removing paragraph (a) and removing the designation for paragraph (b).

3. In § 1435.2, the definition for Crop Year is revised to read as follows:

§ 1435.2 Definitions.

* * * * *

Crop year for the 1996 crop means the period from July 1, 1996 through September 30, 1997. *Crop year* for the 1997–2001 crops means the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 1997 crop year begins on October 1, 1997. The 1997 crop of sugar beets, sugarcane, or sugar means domestically-produced sugar beets, domestically-produced sugarcane, or sugar processed from domestically-produced sugar beets or sugarcane during the 1997 crop year. *Crop year* for the 2002 crop means the period from October 1, 2002 through June 30, 2003. Sugar from desugaring molasses is considered to be from the crop year the desugaring took place.

* * * * *

4. In § 1435.105 paragraphs (a)(1) and (g) are revised to read as follows:

§ 1435.105 Availability, disbursement, and maturity of loans.

(a) * * *

(1) File a loan request, as CCC prescribes, no earlier than July 1 and no later than September 30 for the 1996 crop year, no earlier than October 1 and no later than September 30 for the 1997–2001 crop years, and no earlier than October 1 and no later than June 30 for the 2002 crop year, with the State committee of the State where such processor is headquartered, or with a county committee designated by the State committee;

* * * * *

(g)(1) Notwithstanding any other provision of this subpart, processors receiving loans in July, August, or September:

(i) Must settle the loan by September 30 following disbursement; and

(ii) May repledge the sugar as collateral for a supplemental loan.

(2) Such supplemental loan shall:

(i) Be requested by the processor during the following October;

(ii) Be recourse or nonrecourse depending on which type of loan is in effect according to § 1435.102;

(iii) Be made at the loan rate in effect at the time the supplemental loan is made; and

(iv) Mature in 9 months minus the number of whole months that the initial loan was in effect.

(3) No loans will be made after June 30, 2003.

Signed in Washington, DC, on March 26, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–8413 Filed 4–1–97; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0954]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: The Economic Growth and Regulatory Paperwork Reduction Act of 1996 directs the Board and the Department of Housing and Urban Development (HUD), where possible, to simplify and improve consumer disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and to provide a single format satisfying the requirements of those laws. If legislation is necessary to accomplish these goals, the agencies are to submit legislative recommendations to the Congress. In December 1996, the agencies published for comment an advance notice of proposed rulemaking. After consideration of the comments and further review, the Board has determined that regulatory changes alone would be inadequate to achieve the goals of the Congress and that legislative changes are necessary to harmonize TILA and RESPA. Later this year, the Board and HUD will prepare a report to the Congress concerning potential legislative changes. The Board is publishing this notice to invite additional public comment on possible legislative action.

DATES: Comments are due June 30, 1997.

ADDRESSES: Comments should refer to Docket No. R–0954, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, or to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street (between Constitution Avenue and C Street, NW). If accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format. Comments received will be available for inspection and copying in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Sheilah A. Goodman or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for the hearing impaired *only*, Diane Jenkins, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION: On September 30, 1996, the President signed into law the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009). Section 2101 of that act directs the Board and HUD to simplify and improve the disclosures given in a home mortgage transaction subject to TILA and RESPA, and to create a single disclosure that will satisfy the requirements of both statutes, if possible. If legislation is necessary to develop a single simplified disclosure, the Board and HUD are directed to submit legislative recommendations to the Congress.

The statutes impose numerous requirements and serve various purposes. TILA seeks to promote the informed use of consumer credit by requiring standardized disclosures about credit terms and costs. The disclosures are intended to focus consumers' attention on certain aspects of their transaction and to assist them in comparison shopping. TILA establishes additional disclosure requirements for home-secured loans, and in some cases permits consumers to rescind such loans. RESPA contains both disclosure and price-related provisions. It requires that certain disclosures be given at various points in most mortgage transactions to ensure that consumers receive timely and useful information about the costs associated with the transaction. It also prohibits kickbacks and referral fees to protect consumers from unnecessarily high settlement costs.

In December, the Board and HUD jointly published for comment an advance notice of proposed rulemaking on the issue of simplifying and combining the disclosure requirements of RESPA and TILA (61 FR 69055, Dec. 31, 1996). The notice requested comment on both regulatory and statutory changes to improve the current disclosure scheme. The Board and HUD received more than 80 comment letters, primarily from creditors and their representatives.

Public comments covered a wide range of issues, and are discussed below. Nearly all of the recommendations for reconciling the two regulations would require legislative action, such as certain suggested changes to the timing of disclosures under the two statutes. Some that would not require legislative change have been addressed already; where disclosures overlap the requirements have generally been consolidated. For example, Regulation Z permits creditors to substitute the good faith estimate and the settlement statement required under RESPA for the itemization of the ''amount financed'' under TILA. Similarly, Regulation X permits Regulation Z's disclosures for home equity lines of credit to substitute for the RESPA disclosures. Consistency between the regulations also increased when HUD amended Regulation X to cover subordinate lien loans, and through the Board's updates to the Regulation Z official staff commentary. For example, the agencies' regulations now use similar definitions for the terms ''assumption,'' ''refinance,'' and ''business day.''

The remainder of the recommendations for harmonizing TILA and RESPA generally involve small changes that could produce minor improvements in the disclosures, but probably would not be worth the corresponding compliance costs associated with the change, such as for retraining employees and printing new forms. More fundamentally, some commenters noted the importance of addressing the disclosure scheme under the two statutes in a comprehensive fashion rather than by piecemeal revisions.

Many other commenters recommended changes solely to Regulation Z—changes that would not directly further the objective of creating a single simplified disclosure, but that could simplify compliance. For

example, many commenters suggested simplifying the Regulation Z disclosures for adjustable rate mortgages, recommended consolidating the various model forms, or raised such matters as the permissibility of providing electronic disclosures.

After reviewing the comments, and upon further analysis in consultation with HUD, the Board has determined not to propose any changes to Regulation Z at this time. The Board believes that harmonizing TILA and RESPA to any significant degree requires changes that can only come about through legislative action. The Board will continue to work with HUD to develop legislative recommendations that would ease compliance for creditors and provide consumers useful information in a more timely manner. As part of this process, the Board will explore other mechanisms for obtaining further guidance from interested parties (such as public meetings or convening a working group), as suggested by many of the commenters. The Board is also reopening the comment period for three months to allow for additional public comment on legislative options.

In addition, the Board has several initiatives currently planned or under way that should assist in creating legislative recommendations, and that also will involve the consideration of many of the commenters' suggestions, discussed below, for amending Regulation Z. These initiatives include a consumer survey that the Board has commissioned, hearings that will be held in mid-1997 on the finance charge, a final rulemaking that involves streamlining certain adjustable rate mortgage loan disclosures, a proposal on electronic disclosures, and an upcoming comprehensive review of Regulation Z that will be undertaken pursuant to the Board's Regulatory Planning and Review program.

Developing a Single Format and Simplifying Disclosure Requirements

Both TILA and RESPA require creditors to provide preliminary disclosures soon after they receive an application. A number of commenters recommended the consolidation of the ''early'' TILA and RESPA disclosures for home purchase loans on a single form, and some commenters included samples of their own forms which combined the TILA disclosures on half the page and the RESPA disclosure of the good faith estimate of settlement costs on the other half. The Board notes that Regulation Z already permits creditors to place multiple disclosures on the same page or document, provided that they segregate the TILA disclosures from other information and meet the general disclosure requirements, such as the clear and conspicuous standard. This interpretation is made explicit in the March 1997 update to the official staff commentary to Regulation Z (62 FR 10193, March 6, 1997).

Many commenters suggested that to achieve the goal of simplified disclosures, the agencies would have to develop a new disclosure scheme. In commenting on possible alternatives, a number of commenters noted that RESPA and TILA reflect differing but related goals that exist within each statute and that they need to be harmonized. The goal for some of the disclosures is comparison shopping. These disclosures must be given very early, before the consumer has decided what transaction to enter into, and estimates of costs would suffice for these disclosures. The goal of other disclosures is to highlight certain specific features of the transaction. These disclosures can only be made once the terms of the transaction are agreed to, and must be accurate to be useful. More generally, TILA focuses on credit costs (interest, points, and document preparation fees, for example), while RESPA includes both credit costs and the costs associated with the property transaction (property appraisal, real estate taxes, and the downpayment, for example).

A number of commenters made recommendations on what information might be disclosed under a new disclosure scheme. Some suggested that the new disclosure should list all the fees paid in connection with the transaction (this would include, for example, the mortgage broker, application, hazard insurance, title search, and recording fees), a simple interest rate and perhaps the annual percentage rate (APR), and certain terms like the monthly payment amount and escrow amounts. They suggested that all of the other required disclosures—including the amount financed, the finance charge, and the list of required providers—be eliminated. Others recommended adding an itemization of the finance charge to the existing TILA disclosures and identifying all costs on the RESPA settlement statement as part of either the finance charge or the amount financed.

Some commenters recommended that the disclosures provided at application should have the same format and content as the disclosures provided at settlement. Other commenters recommended that the disclosures at application contain just a few items of the most significance for comparison shopping and the disclosures at settlement contain comprehensive information about the terms of the transaction. Some commenters recommended that the disclosures at application should contain estimates of the range of costs a consumer could expect to pay, while other commenters urged that the cost disclosures be as accurate as possible, particularly where the creditor has control over the cost, and be specific to the particular contemplated transaction.

Many commenters urged the Board and HUD to adopt consistent timing rules for disclosures. For TILA, the statute establishes the timing rules for all the required disclosures except those for variable-rate transactions (adjustable rate mortgages, or ''ARMs''), which are set by regulation. The timing of disclosures goes to whether the purpose of the disclosures is to facilitate shopping, in which case the disclosures should be provided as early as possible, or to reveal critical features of the transaction, in which case the disclosures can only be provided once the details are resolved.

Several commenters urged that the scope of transactions covered by RESPA and TILA disclosure requirements be consistent. For example, RESPA's good faith estimate of closing costs is required for both purchase money and refinance transaction, while RESPA's special information booklet and the early TILA disclosures are required only for purchase money transactions. In preparing the report to the Congress on potential legislative changes, the Board will consider whether the current distinctions between purchase money transactions and refinancings, for example, are appropriate or whether, as some commenters recommended, the disclosure requirements—even if expanded—should be the same for all transactions.

Improving Disclosure Requirements Under TILA

TILA requires the disclosure of the APR (the cost of credit as a yearly rate) and the finance charge (the cost of credit as a lump sum). A number of commenters expressed concerns regarding this framework. Several focused on the exclusion from the finance charge of certain fees that a consumer pays as part of mortgage transactions, such as appraisal and application fees. They asserted that the mixed treatment of mortgage costs increases the complexity of compliance and reduces the usefulness of the APR. In addition, the fees included in the calculation of the APR and finance charge under TILA do not wholly correspond to the fees disclosed under

RESPA. Some asserted that the APR can be misleading because it assumes the loan is held to maturity, when most consumers hold their loans for a much shorter period. A few commenters objected to the inclusion in the finance charge of all the interest that would accrue over the life of the loan. They claimed the resulting APR is misleading because too much interest is included in the APR and because the interest is not discounted to its present value.

TILA requires that up to 16 items be disclosed in addition to the APR and finance charge. The commenters raised a number of general concerns about these other disclosures. Some questioned the value of certain disclosures required by the statute, including the total of payments and the security interest. Other commenters recommended modifications to certain disclosures. For example, creditors must disclose whether or not a penalty will be imposed if the obligation is prepaid in full. Some commenters asserted that the penalty should be disclosed only if it might be imposed. Several commenters recommended that the payment schedule disclosure be modified to require only the monthly payment amount, not the number of payments and dates too. Other commenters recommended that the disclosures concerning the contract reference, security interest, assumption policy, required deposit, demand feature, late payment, and prepayment penalty be explained in a booklet, perhaps as part of RESPA's special information booklet.

Other commenters noted that recent legislative changes have given the Board the authority to exempt certain transactions from TILA. The legislation directs the Board, in exercising this authority, to consider the amount of the loan, the financial sophistication of the borrower, and whether the loan is secured, among other factors. Some commenters made recommendations on how to exercise that authority, and recommended that similar exemptions be made under RESPA.

A number of commenters recommended changes to the right of rescission rules under TILA. They recommended limiting the types of transactions that are subject to the right of rescission and increasing the circumstances under which a consumer may waive that right. Some commenters recommended that creditors be required to provide a single copy of the notice of the right to rescind, instead of two copies as currently required.

A number of commenters recommended that the ARM disclosures be simplified. Detailed disclosures for ARM loans must be provided at application or before a nonrefundable fee is paid, whichever is earlier. Commenters recommended eliminating the requirement that a creditor provide a historical example of how rates had varied in the past. Several commenters recommended that the Board modify the requirements so that creditors disclose the actual terms of the transaction and the actual contract language.

Commenters also recommended improvements to the disclosures required for home-equity lines of credit. Several consumer group commenters urged that the disclosures for these transactions should reflect the particulars of the transaction and assume that the maximum amount of the line of credit is borrowed immediately, that only the minimum monthly payments are made, and that the interest rate will vary as it has in the past. A number of commenters recommended that the Board eliminate the requirement to disclose a historical example. Commenters also urged the Board to modify the disclosures for home-secured loans to facilitate comparisons between lines of credit and installment loans by including all fees in the calculation of the APR.

Commenters identified other minor adjustments to TILA's disclosure requirements. For example, several commenters recommended that the Board require creditors to disclose a simple interest rate in addition to the APR and an explanation of how the APR is related to the interest rate. One commenter recommended that the Board add an introductory statement to each disclosure, explaining the purpose of the disclosure. (The Board notes that the regulation does not preclude creditors from providing additional information, and creditors can currently make these disclosures, separate from the required disclosures, if they choose.) A number of commenters recommended that the Board provide guidance on the permissible use of electronic disclosures. Some commenters recommended some reorganization of the required disclosure booklets, and suggested that the Board and HUD combine the special information booklet, the home-equity line of credit booklet, and adjustable rate mortgage booklet into one.

Legislative Recommendations

The information required to be disclosed under RESPA and TILA is extensive, the concepts disclosed are complex, and the statutes are written with different goals in mind. After consideration of the comments and further analysis, the Board has determined that the changes that could be made to Regulation Z alone would not achieve the goals the Congress identified: simplifying and improving the TILA and RESPA disclosures and providing a single format that satisfies the requirements of the two laws. Improving the TILA and RESPA disclosures to make them significantly shorter, easier to understand, and consistent requires legislative change.

The Board will continue to work with HUD to develop a set of legislative recommendations that would promote streamlined disclosures for transactions subject to both RESPA and TILA. In preparing the report, the Board and HUD will consider the issues raised by the commenters and take steps to seek additional public views, such as by jointly convening a forum or task force. The public is invited to submit comments with any further suggestions they may have for legislative changes.

By order of the Board of Governors of the Federal Reserve System, March 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8407 Filed 4–1–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 557, 561, 563, and 563g

[97–27]

RIN 1550–AB00

Deposits and Electronic Banking

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking and advance notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to substantially streamline its deposit-related regulations. This Notice of Proposed Rulemaking (NPR) follows a detailed staff review of pertinent regulations and policy statements in the Code of Federal Regulations (CFR) to determine whether each provision is necessary, imposes the least possible burden consistent with safety and soundness, and is clearly written. Today's proposal is issued pursuant to the Regulatory Reinvention Initiative of the Vice-President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

In addition, OTS is publishing an advance notice of proposed rulemaking (ANPR) seeking comment on OTS electronic banking regulations. OTS is concerned that its current electronic banking regulations do not adequately address advances in technology and may impede prudent innovation by federal savings associations.

DATES: Comments must be received on or before June 2, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 97–27. These submissions may be hand-delivered to 1700 G. Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: For Deposits: Edward J. O'Connell, III, Project Manager, (202) 906–5694, Supervision Policy; or Richard Blanks, Counsel (Banking and Finance), (202) 906–7037; or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639. For Electronic Banking: Paul Glenn, Special Counsel, Chief Counsel's Office, (202) 906–6203, or Paul Robin, Program Analyst, Compliance Policy, (202) 906–6648, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

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I. Background of the Proposal and Advance Notice of Proposed Rulemaking

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous obsolete or redundant regulations that could be quickly repealed. OTS also identified several key regulatory areas for a more intensive, systematic regulatory burden review. The first areas reviewed—lending and investment authority, subsidiaries and equity investments, corporate governance, conflicts of interest, corporate opportunity and hazard insurance—were selected because they have a significant impact on thrift operations, and had not been developed on an interagency basis or been comprehensively reviewed for many years. OTS has issued comprehensive final regulations on all of these areas.[1]

Today's proposal is the first in the next phase of OTS's review of its regulations. It follows an intensive review of OTS's deposit-related regulations and policy statements. In developing this proposal, OTS considered the relevant regulations, agency guidance, legal interpretations, and requirements of the other federal banking agencies. Like other OTS regulatory reinvention efforts, this proposal was prepared in consultation with those who use these regulations on a daily basis, including OTS regional examination staff.

OTS is also seeking public input on a related area of its regulations that has had an increasing impact on thrift operations, but has not been recently amended—electronic banking. OTS has three regulations affecting electronic banking. These include: 12 CFR 545.138 (Data processing services); 545.141 (Remote service units); and 545.142 (Home banking services). After reviewing these electronic banking regulations, OTS has decided to solicit public comment through an ANPR before determining what regulatory amendments may be appropriate. OTS is concerned that these regulations may not appropriately address electronic banking services under emerging technologies.

II. Notice of Proposed Rulemaking: Deposits

A. Objectives

The overarching goal of OTS's reinvention initiative is to reduce regulatory burden on savings associations to the greatest extent possible, consistent with statutory requirements and safety and soundness. In the context of deposit-related regulations, we believe that maximum burden reduction can be achieved by pursuing the following objectives.

First, we are attempting to eliminate duplication and overlap from OTS regulations. Several OTS deposit-related regulations address areas that are covered by Regulations D and DD of the Federal Reserve Board. These regulations apply to all depository institutions, including savings associations. Regulation D (Reserve Requirements of Depository Institutions)[2] contains comprehensive deposit definitions. Further, Regulation DD (Truth in Savings)[3] applies to all depository institutions except credit unions.[4] This approach has two benefits—the elimination of regulations from the CFR and reduced confusion for savings associations.

Second, as part of its reinvention effort, OTS is endeavoring to eliminate regulations that are outdated or micromanage thrift operations. For example, OTS proposes to replace several specific deposit-related recordkeeping requirements with a general recordkeeping regulation that is tied more closely to safety and soundness. This approach, which parallels recent changes in OTS's loan documentation regulation, will help savings associations take better advantage of technological advances.[5]

Third, OTS wants to remove regulations that merely restate existing statutory authority. It has been the long-standing position of OTS and its predecessor agency, the Federal Home Loan Bank Board (FHLBB), that specific regulations are not required to permit federal savings associations to engage in activities authorized by the Home Owner's Loan Act (HOLA).[6] Rather, the role of OTS regulations should be to impose necessary conditions or limitations on those statutorily authorized activities. Section 5(b) of the HOLA states that a federal savings association may raise funds through a variety of types of accounts, ''[s]ubject to the terms of its charter and regulations of the Director [of OTS].''[7] Either the association's charter or OTS regulations may set out the rights afforded accountholders. Thus, unless OTS regulations or the institution's charter restrict the type of accounts a federal savings association may offer, an association may offer whatever types of statutorily authorized accounts it deems appropriate.

[1] 61 FR 50951 (September 30, 1996) (Lending and Investment); 61 FR 66561 (December 18, 1996) (Subsidiaries and Equity Investments); 61 FR 60173 (November 27, 1996) (Conflicts of Interest, Corporate Opportunity and Hazard Insurance); 61 FR 64007 (December 3, 1996) (Corporate Governance).

[2] 12 CFR Part 204 (1996).

[3] 12 CFR Part 230 (1996).

[4] 12 CFR Part 707 contains separate Truth in Savings regulations applicable to credit unions.

[5] 61 FR 50951, 50982 (to be codified at 12 CFR 560.170).

[6] 12 U.S.C. 1461–1470.

[7] 12 U.S.C. 1464(b).

Fourth, OTS believes that it should maintain a clear and consistent position on the preemptive effect of federal regulation on the deposit-related activities of savings associations. It is particularly necessary to reiterate this position as existing regulations are restructured, amended, converted into guidance, or deleted. OTS has long held that, with certain narrow exceptions, state laws or regulations that purport to affect the deposit activities of federal savings associations are preempted.[8] Preemption in this area is essential to OTS's regulation of the operations of federal savings associations because deposit taking is one of the most important functions of a savings association. None of the changes discussed today should be construed as evidencing an intent by OTS to change this long-held position. Whether OTS retains a specific regulation addressing a particular aspect of deposit taking or deletes the provision to streamline its regulations and reduce regulatory burden, the agency intends to occupy the entire field of deposit regulation for federal savings associations.

This approach is consistent with court decisions that provide that OTS has authority over federal thrifts from their ''cradle to [their] corporate grave.''[9]

This proposed rule includes a general deposit preemption provision. This provision restates long-standing preemption principles applicable to federal savings associations, as developed in a long line of court cases and legal opinions by OTS and the FHLBB. The agency hopes that the increased clarity and specificity of the proposal will reduce confusion and the need for frequent preemption inquiries in the future.

Finally, OTS is removing certain regulations and policy statements that merely reiterate universally recognized deposit-related incidental powers of federal savings associations, such as the ability to use insured banks as collecting and paying agents and the ability to provide ''deposit assurance'' on certain direct deposits.

With these goals in mind, all OTS deposit-related regulations will be consolidated, streamlined, and moved into a new part 557. This action will make the deposit-related regulations easier to locate and follow.

B. Historical Overview

Since enactment of the HOLA, federal savings associations have been authorized to raise funds through a variety of accounts, and to issue passbooks, certificates, or other evidence of accounts.[10] In 1982, the Garn-St Germain Depository Institutions Act (DIA) expanded this authority to permit federal thrifts to accept demand accounts.[11]

Historically, the FHLBB, through its regulations, affirmatively approved specific deposit-related activities. This approach has shifted in recent years as a result of changes in the applicable statutes and advances in business and technology. Now thrifts may undertake any activity permitted by statute, unless a regulation limits or restricts the authority. Accordingly, it is no longer necessary to retain regulations specifically approving deposit-related activities.

Additionally, many of the deposit-related regulations originated with the FHLBB, in its capacity as the operating head of the former Federal Savings and Loan Insurance Corporation (FSLIC), which insured thrift deposits. Since OTS is not the insurer of thrift deposits, these regulations are no longer needed.

Finally, certain FHLBB-era regulations have now been superseded by more recent statutes, such as the Truth in Savings Act,[12] and by Federal Reserve Board regulations applicable to all insured institutions. Consequently, many of the policy and legal reasons for certain regulations no longer exist.

C. Proposed Disposition of Deposit-Related Regulations

Part 545 Operations (Federal Savings Associations)

Section 545.10 Savings Deposits or Shares

Section 545.10 states that OTS approves savings deposits or shares that comply with the provisions of subsection (b) of section five of title III of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'')[13] (12 U.S.C. 1464(b)), the federal savings association's charter, and OTS rules and regulations relating to the type, form, return, and maturity of deposits or shares. OTS proposes to delete this paragraph. OTS ''approval'' of deposits or shares is not required by 12 U.S.C. 1464(b), which authorizes federal savings associations to raise funds through various types of accounts and issue evidence of such accounts.

Section 545.11 Issuance of Accounts

Section 545.11(a) requires a federal savings association to obtain and maintain FDIC insurance prior to doing business. OTS proposes to delete this subsection and rely on the statutory requirement that federal savings associations must obtain and maintain FDIC insurance. See 12 U.S.C. 1462(4), 1818(a)(1).

Section 545.11(b) provides that federal savings associations may issue accounts as defined in § 561.2. OTS proposes to replace the detail of this subsection with a more general statement of authority in new Part 557.

Section 545.11(c) sets forth the status and priority of savings deposits and accounts in the event of a liquidation, dissolution or winding up of the association. OTS proposes to delete this subsection because these priorities are set forth by statute. See 12 U.S.C. 1821(d)(11) and 1464(b)(1)(B).

Section 545.12 Demand Deposit Accounts

Section 545.12(a) states that a federal savings association may accept demand deposit accounts from any person. OTS proposes to delete this subsection because 12 U.S.C. 1464(b)(1)(A) contains the authority for issuance of demand deposit accounts.

Section 545.12(b) prohibits a federal savings association from paying interest on a demand deposit. OTS proposes to delete this subsection because 12 U.S.C. 1464(b)(1)(B)(i) contains this prohibition. This section also provides that finders' fees offered in accordance with 12 CFR 561.16(b) are not payments of interest. OTS proposes to transfer the finders' fee exception to the Thrift Activities Handbook.

Section 545.12(c) indicates that demand deposit accounts include only those accounts that are payable on demand within the meaning of 12 CFR 563.6. This provision is unnecessary in light of the deletion of paragraphs (a) and (b). For guidance in interpreting 12 U.S.C. 1464(b)(1)(A) and (b)(1)(B)(1), institutions should refer to the definition of demand deposit contained in Regulation D.[14]

Section 545.13 Account Records

Section 545.13(a) states that a federal savings association must comply with §§ 563.1 and 563.170(c)(8), and that accounts must be evidenced by a written agreement with transactions confirmed by issuance of a receipt or

[8] See OTS Op. Chief Counsel (October 11, 1991).

[9] *Fidelity Federal Savings and Loan Ass'n* v. *del la Cuesta,* 458 U.S. 141, 145, quoting *California* v. *Coast Federal Savings and Loan Ass'n,* 98 F. Supp. 311, 316 (S.D. Cal. 1951).

[10] 12 U.S.C. 1464(b).

[11] Pub. L. 97–320, 96 Stat. 1469 (October 15, 1982).

[12] 12 U.S.C. 4301 *et seq.*

[13] Pub. Law 101–73, 103 Stat. 183 (August 9, 1989).

[14] This proposal does not address deposit-related definitions currently contained in OTS regulations. OTS is planning a comprehensive review of all regulatory definitions later this year.

advice. OTS proposes to delete this subsection. The cross-references are no longer appropriate because § 563.1, which formerly dealt with forms of accounts, was amended in 1992 to refer to a de novo savings association's charters and by-laws,[15] and § 563.170(c)(8) has been recently removed.[16] The term ''advice'' is no longer a part of transactional terminology. Moreover, OTS would replace the specific recordkeeping requirements for written agreements and receipts by a more general recordkeeping regulation in new Part 557. Nothing in this proposed revision would prohibit a savings association from the normal business practice of providing receipts for transactions. However, the proposed change may allow federal savings associations to take better advantage of technological and marketplace advances in telephonic and electronic banking.

Section 545.13(b)(1) provides that a federal savings association may treat the holder of record of an account as the owner, regardless of any notice to the contrary, until the account is transferred on the federal association's books. Under this section, accounts are only transferable on the association's books on proper application by the transferee and acceptance of the transferee as accountholder on terms approved by the board of directors. OTS proposes to modify and incorporate this subsection into new Part 557.

Under § 545.13(b)(2), a federal savings association may issue negotiable certificate accounts in bearer form without recording ownership on the books of the federal savings association. OTS proposes to replace this subsection with the more general recordkeeping requirement in new Part 557. We note that the FDIC has a regulation concerning negotiable certificates of deposits where the depository institution has defaulted. If any deposit obligation of an insured institution is evidenced by a negotiable instrument, the FDIC will recognize the owner as if that person's name were on the records of the institution if the instrument was negotiated to such owner prior to the date of default of the institution. See 12 CFR 330.4(b)(4) (1996).

Section 545.13(c) recites authority for federal savings associations to use insured banks as collecting and paying agents for its accounts. OTS proposes to delete this subsection because these incidental powers are uniformly recognized and do not need to be codified in regulatory text.

[15] 57 FR 14344 (Apr. 20, 1992).

[16] 61 FR 50951 (September 30, 1996).

Section 545.14 Determination and Distribution of Earnings

Under § 545.14(a), a federal savings association may issue savings accounts earning interest at different rates of return. These rates may be fixed at the time the account is issued or may vary on any basis specified at the time the deposit is accepted, subject to 12 CFR 563.10. OTS proposes to incorporate this subsection in new Part 557.

Section 545.14(b) states that a federal savings association may distribute earnings on savings accounts as provided in its charter and bylaws and the terms of the account. OTS proposes to incorporate this subsection into new Part 557.

Section 545.14(c) prohibits the distribution of earnings on share accounts until the federal savings association has provided for the payment of expenses and for the pro rata portion of credits to reserves, as required by the federal savings association's charter and 12 CFR Part 567. The term ''reserve credits'' is an archaic reference to the transfer of a portion of net income to a restricted capital account. Charters for mutual share institutions had required this transfer. OTS proposes to delete this subsection because modern federal charters no longer provide for mutual share institutions.

Part 556 Statements of Policy

Section 556.12 Deposit Assurance of Direct Deposit of Social Security Payments

This Statement of Policy states that the implied powers of a federal savings association include the provision of ''deposit assurance'' in connection with the Social Security Administration's direct deposit program. A federal savings association provides deposit assurance when it credits a social security beneficiary's account with payment on its due date, whether or not the payment has been received by the association.

The Statement of Policy advises federal savings associations to implement safeguards and controls to address the risks of the program. The policy statement further notes that Regulation E (Electronic Fund Transfers)[17] applies to the program.

OTS proposes to delete this Statement of Policy because insured depository institutions universally provide deposit assurance of social security payments. OTS will consider whether handbook guidance would be useful to reiterate the need for adequate institutional safeguards and controls and the applicability of Regulation E.

[17] 12 CFR Part 205 (1996).

Part 563 Operations

Section 563.2 Simple Form of Certificate; Passbooks

Section 563.2 sets forth the requirements for a simple form of certificate account. A mutual savings association may issue a simple form of savings or investment certificate or a passbook if, in accordance with State law, the association's charter, constitution, or bylaws includes a clear provision indicating that: (i) All shareholders are members and share equally in earnings and in assets pro rata to paid-in value, plus credited dividends; and (ii) the savings association may not charge any fee for the privilege of becoming, remaining, or ceasing to be a member of the savings association. This simple form is not required to contain any membership certificate or any statement of the dividend, withdrawal, or other rights of members.

OTS proposes to delete this section because it is outdated. Savings associations will continue to be subject to the disclosure requirements of Regulation DD.

Section 563.3 Long Form of Membership Certificate

Under § 563.3, a savings association must include certain specified statements in all share, membership, deposit certificates, passbook, or other instrument evidencing a withdrawal instrument that: (i) Pay a different rate of dividends or interest to different classes of shares or securities; (ii) prefer any one or more classes of shares or securities; or (iii) charge any fee for the privilege of becoming, remaining, or ceasing to be a saver or investor in the savings association.

Like § 563.2, this section is outdated and unnecessary in light of the disclosure requirements in Regulation DD. Accordingly, OTS proposes to delete this provision.

Section 563.6 Payment of Accounts on Demand

Section 563.6 prohibits a savings association from issuing any account, or advertising or representing that it will pay holders of its accounts, on demand. Demand accounts, tax and loan accounts, note accounts, and United States Treasury general accounts are not subject to this prohibition. This section also sets forth various definitions of the term ''accounts payable on demand.''

OTS proposes to delete this section and instead rely on the disclosure requirements applicable under

Regulation DD, and on statutory provisions authorizing savings associations to issue demand deposits (12 U.S.C. 1464(b)(1)(A)(i)) and prohibiting the payment of interest on demand deposits (12 U.S.C. 1464(b)(1)(B)(i)). These statutory provisions should be interpreted in a manner that is consistent with the definition of demand deposit contained in Regulation D.

Section 563.7 Fixed-Term Accounts (Certificate Accounts)

Under § 563.7(a), a savings association may offer certificate accounts in such form as the board of directors of the savings association may authorize by resolution. Further, with respect to any time deposit, a savings association may impose a penalty for early withdrawal.

Section 563.7(b) authorizes a savings association to pay earnings on a certificate account at a rate, or anticipated rate of return, determined when the deposit is accepted. The rate may be fixed or be based on a schedule, index, or formula specified at the time the account is accepted.

Section 563.7(c) prohibits an association from accepting a fixed-term account for a term of less than seven days. This paragraph also prohibits an institution from issuing any certificate account unless the association has complied with the chartering provisions of § 563.1.

Section 563.7(d) states that a certificate may prohibit withdrawal prior to maturity except in the cases of death or incompetence.

OTS proposes to modify this section. While the provisions of paragraph (b) would be retained in the new regulation at § 557.3, the remainder of this section would be deleted to avoid duplication and redundancy. Institutions issuing such certificate accounts must comply with the disclosure requirements contained in Regulation DD and should rely on the definitions applicable to such accounts contained in Regulation D.

Section 563.9 Eurodollar Deposits

This regulation addresses the issuance of Eurodollar deposits. When this provision was added, FHLBB regulations on pooled accounts and other restrictions did not apply to Eurodollar deposits. These restrictions have been removed for all accounts. OTS, therefore, proposes to delete this section because it is no longer necessary. This approach is consistent with the regulations of the other banking regulators which do not specifically address regulatory treatment of Eurodollar deposits.

Section 563.10 Earnings-Based Accounts

Section 563.10 provides extensive definitions and limitations regarding earnings-based accounts. In an earnings-based account, the payment of interest is determined by reference to an index based upon the profitability, earnings, cash flow, appreciation, or return on assets owned by, or under the control of, the savings association.

OTS proposes to delete this section because it is unnecessary and duplicative of disclosure requirements contained in Regulation DD.

D. Proposed New Part 557

OTS proposes to adopt a new Part 557 that will ultimately include all of the agency's deposit-related regulations. The agency believes that this organization will make its relevant deposit-related regulations easier to locate. The proposed deposit-related regulation is discussed below.

Section 557.1 General Authority (Proposed)

This proposed section states that new Part 557 is issued under OTS general rulemaking and supervisory authority under the HOLA. The proposed section also cites the general authority for federal savings associations' deposit-related activities. It states that a federal savings association may raise funds through deposits and issue evidence of such accounts as authorized under section 5(b) of the HOLA, the savings association's charter, and regulations issued by OTS.

Section 557.2 Applicability of Law (Proposed)

As discussed in Section II.A. above, deposit-related activities are core activities in which federal savings associations engage. Federal preemption of state laws purporting to affect deposit-related activities is critical to the agency's mandate under HOLA sections 4(a) and 5(a) to provide for the safe and sound operation of federal savings associations in accordance with the best practices of thrift institutions in the United States.

This proposed section sets forth OTS's long-standing position on the federal preemption of state laws purporting to affect the deposit-related activities of federal savings associations. This position has been developed in caselaw and legal opinions by OTS and its predecessor, the FHLBB, and is currently reflected in § 545.2. Because the deposit-related activities regulations will be moved from Part 545 and, thus, separated from § 545.2, OTS proposes to include new § 557.2 to confirm and carry forward its existing preemption position. The agency believes that the increased clarity and specificity of § 557.2 will reduce confusion and the need for frequent preemption inquiries in the future.

The proposed section on preemption has three paragraphs. Paragraph (a) explicitly states the agency's intent to occupy the field of deposit-related activities for federal thrifts and articulates the statutory and regulatory basis for this preemption. Paragraph (b) contains a list of examples of preempted state laws, drawn from case law and OTS precedent. This paragraph emphasizes that the list is not intended to be exhaustive. Paragraph (c) describes certain types of state laws that OTS does not intend to preempt. These categories include: contract and commercial law, tort law, and criminal law. Such laws will not be preempted to the extent that they only incidentally affect the deposit-related activities of federal savings associations or are otherwise consistent with the purpose of paragraph (a).

When analyzing the status of state laws under new § 557.2, the first step will be to determine whether the type of law in question is listed among the illustrative examples of preempted state laws under paragraph (b). If so, the analysis will end there; the law is preempted. If the law is not covered by paragraph (b), the next question is whether the law affects deposit-related activities. If it does, then, in accordance with paragraph (a), the presumption arises that the law is preempted. This presumption can be reversed only if the law can clearly be shown to fit within the confines of the types of state laws that are not preempted, as described in paragraph (c). For these purposes, paragraph (c) is intended to be interpreted narrowly. Any doubt should be resolved in favor of preemption.

Section 557.3 Interest and Earnings (Proposed)

This proposed section states that a savings association may pay interest on a savings account at a rate or anticipated rate of return determined when the account is accepted, as provided in its charter and bylaws and the terms of the account. The rate or anticipated rate on a savings account may be fixed, or may vary according to a schedule, index, or formula specified when an account is accepted.

Section 557.4 Account Records (Proposed)

This proposed section replaces the specific recordkeeping requirements of the existing regulations with more general requirements. This section states

that each savings association should establish and maintain deposit documentation practices and records that demonstrate appropriate administration and monitoring of its deposit-related activities. A savings association's records should include adequate evidence of the ownership, balances, and transactions involving the account. Further, the proposed section provides that a federal savings association may treat the holder of record of an account as the owner, regardless of any notice to the contrary, until the account is transferred on the association's records.

III. Advance Notice of Proposed Rulemaking: Electronic Banking

OTS seeks comments on whether its regulations are sufficiently flexible to permit federal savings associations to engage in appropriate electronic banking activities, consistent with safety and soundness, the Truth in Lending Act,[18] Regulation E, and other relevant statutes and regulations. OTS has received numerous inquiries on electronic banking issues. For example, federal savings associations have asked whether they may provide banking services over the Internet, whether they may open accounts or issue loans from machines in remote locations, what steps must an association operating on the Internet take to comply with the Community Reinvestment Act (CRA), and whether savings associations may open accounts on the Internet for depositors living abroad.

This advance notice of proposed rulemaking requests comments on: (1) Electronic banking facilities and data processing activities; and (2) more general issues relating to electronic banking.

A. Electronic Banking Facilities and Data Processing

Three OTS regulations affect a thrift's ability to engage in electronic banking activities. Two of these regulations describe the types of facilities through which federal thrifts may deliver services to their customers. 12 CFR 545.141 (Remote service units); 545.142 (Home banking services). The third regulation, the data processing regulation, 12 CFR 545.138, provides the general authority to engage in certain electronic banking activities. To the extent that these regulations do not reflect current activities and technologies, OTS is interested in how the regulations might be updated. Each area of concern is discussed more fully below.

[18] 15 U.S.C. 1601 *et seq.*

Facilities

OTS regulations permit a federal savings association to deliver services to customers at various kinds of facilities. These include: home offices, branches, agency offices, data processing or administrative offices, remote service units (RSUs), and home banking. Recently, OTS has been asked to address whether an automated loan machine (ALM) is a branch office or some other type of facility. This issue has raised more general questions about how the agency should treat new electronic technologies.

Several associations have informed OTS that they plan to establish networks of ALMs located away from their home or branch offices. Each ALM would permit a customer to apply for a consumer loan up to a specific limit by entering certain information by keypad into a machine resembling an automated teller machine (ATM). This information would be transferred immediately by wire to the institution's main-frame computer. The main-frame computer would analyze the information under a credit-scoring program, and would check the information electronically with credit-reporting bureaus. If the information meets the credit-scoring criteria, the computer program would approve the loan. The ALM then would print out a cashier's check and appropriate loan disclosure forms. Under the proposals outlined to OTS, the loan would not be treated as closed until the check was endorsed and presented to the institution for payment. If the loan were disapproved by the computer program, the ALM would print out all necessary denial disclosures. The process is expected to take about ten minutes.

This procedure raises the question whether each ALM is a branch. This is significant because the rules governing the establishment and operation of a branch or an RSU are different. An ALM might appear to meet the definition of a ''remote service unit'' at 12 CFR 545.141(a), except that the regulation expressly prohibits an RSU from ''establish[ing] a loan account.'' 12 CFR 545.141(b). A facility not covered by the RSU regulation or other specific classification is, by default, a branch. See 12 CFR 545.92(a).

The prohibition against establishing a loan account at an RSU appears to date from a judicial decision over twenty years ago. *Bloomfield Fed. Sav. & Loan Ass'n.* v. *American Community Stores Corp.*, 396 F. Supp. 384 (D. Neb. 1975). In *Bloomfield*, the plaintiff challenged the establishment of ATMs by a federal thrift by asserting that the thrift had failed to comply with the FHLBB's procedures for opening new branches. The court noted that the FHLBB held broad authority to define a branch, but had limited this definition to a full-time and permanent office at which any business of a thrift may be transacted. Since the FHLBB's regulations stated that an RSU could engage in specific activities and these activities did not include opening savings accounts or originating, processing, or approving loans, the court concluded that the planned ATMs (which were part of an RSU pilot project) were not branches. Therefore, the thrift did not have to comply with the branching procedures.

In 1981, the FHLBB simplified the RSU regulation by deleting enumerated activities for RSUs. In its place, the FHLBB added an explicit statement that an RSU could not be used to open a savings account or establish a loan account. See 46 FR 8440 (1981). This statement is found in current OTS regulations at 12 CFR 545.141(b). *Bloomfield* suggests that OTS would have to revise its regulations governing branches and other facilities to broaden the RSU regulation. OTS solicits comment on whether such revisions would be appropriate.

A review of the facility regulations also may be appropriate in the home banking context. Currently, it is not clear whether a full range of banking services may be offered under the home banking services regulation. 12 CFR 545.142. This regulation was drafted when home banking was limited to monitoring balances, transferring funds between accounts at the same institution, and directing payments from an existing checking account in lieu of sending checks by mail. Because a thrift's role in these activities was strictly clerical, the definition of home banking services was limited to ''the transfer of funds of financial information'' and ''the performance of other transactions initiated by the customer.'' 12 CFR 545.142.

It is not clear whether § 545.142 would cover the opening of new accounts or the processing of credit applications. The phrase ''transactions initiated by a customer'' might encompass these new services, but the common meaning of that phrase may limit it to transactions involving existing accounts. With technological advances making it feasible for thrifts to make risk-based decisions on an electronic basis (e.g., credit scoring), OTS solicits comment on the appropriate scope of the home banking services definition.

Accordingly, OTS solicits comments on whether the definitions of RSUs and

home banking services are sufficient to encompass the full range of electronic banking activity. In this regard, we note that federal savings associations have specific statutory authority to establish RSUs as provided in OTS regulations pursuant to 12 U.S.C. 1464(b)(1)(F).[19] OTS is also interested in whether that statutory language raises particular issues for the industry. OTS anticipates that these comments will help the agency to better understand industry and customer expectations concerning the nature of such facilities.

Permissible Activities

OTS also solicits comment on whether its current regulations authorizing data processing activities permit a federal savings association to optimize the latest technology. The data processing activities of federal savings associations are covered by 12 CFR 545.138. This regulation was issued when data processing was limited to the non-discretionary functions of processing and storing data. Today, a financial institution can make risk-based decisions solely through electronic means. Accordingly, it may be appropriate for OTS to revise this regulation. In addition, the current OTS data processing regulation limits the ability of a federal savings association to sell or market services, software, and excess capacity. All of these restrictions may not be necessary, especially since the comparable interpretative ruling for national banks is less restrictive. See 61 FR 4849, at 4853 (February 9, 1996).

Data Processing. Under the current data processing regulation, the processing of data generally encompasses a record-keeping, rather than a risk assessment, function. This restrictive view presents difficulties in applying the OTS regulation to thrifts utilizing the emerging technologies.

This limited view of data processing originated in 1965 in the FHLBB regulation that first authorized federal thrifts to engage in data processing services. In that regulation, the FHLBB defined ''data processing services'' as ''the *maintenance* of bookkeeping, accounting, or other records primarily by mechanical or electronic methods.'' See 12 CFR 545.14–2 (1966) (emphasis added). This view of data processing as an electronic form of recordkeeping continues, despite substantial revisions to the data processing regulation in 1983. These 1983 revisions expanded the kinds of data that could be processed to include data that involved ''financial, economic, or related to thrift, home financing, or the activities of depository institutions.''[20] The FHLBB did not, however, expand the definition of ''processing'' because technological improvements had not made it possible to make risk-based decisions entirely through electronic means. The current OTS data processing regulation is substantially the same as the 1983 FHLBB rule.

In a recent review of its related data processing provisions, the OCC concluded that its use of the term ''data processing'' failed to capture the potential of electronic banking. Recognizing that individual banks ''are engaging, and will engage, in an increasing range of activities through electronic means and facilities beyond simply 'data processing','' the OCC deleted that term from its interpretative ruling. Instead, the OCC interpretative ruling refers to ''electronic means and facilities.''[21] This term clearly will encompass new technology that enables a depository institution to make risk-based judgments electronically.

Sales of Facilities and Software. The OTS data processing regulation provides federal savings associations with authority to provide data processing and data transmission services, to sell by-products incident to those services, and to sell excess capacity. Each authority is subject to significant constraints. Several of these constraints do not apply to national banks.

The authority to provide data processing and data transmission services is found at § 545.138(b). Under this provision, a federal savings association may perform all processing functions on data submitted by a purchaser. This authority, however, is subject to data and customer restrictions. For example, the data to be processed must be ''financial, economic, or related to thrift, home financing, or the activities of depository institutions.'' 12 CFR 545.138(b)(1). In addition, the thrift must provide services primarily for itself, other depository institutions, parents or subsidiaries of depository institutions, or customers of the thrift. Sales of such services to others may not exceed half of the total data processing services provided by the thrift. See 12 CFR 545.138(b)(2).

Incident to its data processing authority, a federal thrift may also sell ''by-products'' of data processing—typically software. 12 CFR 545.138(c)(1). Again, this authority is subject to certain restrictions. For example, the software must be originally developed for the thrift's own use, and the by-products may not be substantially enhanced for purposes of marketing.

Finally, the thrift may sell its excess capacity. In connection with such sales, the thrift may only furnish access to facilities and provide necessary operating personnel. The association may not artificially create excess capacity by acquiring equipment or facilities whose capacity is substantially greater than that necessary to accommodate the thrift's present or expected future needs for providing permissible data processing services. 12 CFR 545.138(c)(2).

By contrast, national banks have broader authority to sell electronic services, products, and excess capacity. The recently promulgated OCC interpretative ruling for national banks provides:

> A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver. A national bank may also, in order to optimize the use of the bank's resources, market and sell to third parties electronic capacities acquired or developed by the bank in good faith for banking purposes.[22]

With respect to the provision of data processing or electronic services, a national bank has fewer customer restrictions.[23] As noted above, a federal thrift may only sell such services to other depository institutions, parents or subsidiaries of depository institutions, or its loan or deposit customers. The OCC interpretative ruling also does not expressly restrict the types of data that may be processed, although the limitation to services that a bank ''is otherwise authorized to perform'' may have an effect that is similar to OTS restrictions.

Software sales by national banks are permissible if the software is ''acquired or developed * * * in good faith for banking purposes.''[24] This is more expansive than the comparable authority for federal savings associations in two respects. First, the national bank's software must be developed ''in good faith for banking purposes,'' rather than for the bank's own use. Second, nothing prohibits a national bank from substantially enhancing its software for marketing

[19] We note that banks previously had to file branch applications before establishing ATMs and remote service units. Section 2205 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Title II of Pub. L. 104–208) eliminated that requirement.

[20] 48 FR 7831 (1983).

[21] 61 FR at 4853, 4865 (February 9, 1996) (to be codified at 12 CFR 7.1019).

[22] 61 FR 4865 (to be codified at 12 CFR 7.1019).

[23] The OCC also recently has opined that a national bank may, as an action incidental to the business of banking, sell Internet access to non-customers. See OCC Legal Op. (August 19, 1996).

[24] 61 FR 4865 (to be codified at 12 CFR 7.1019).

purposes, provided the software retains its banking purpose.

National banks also appear to have broader authority to sell excess capacity. Unlike thrifts, banks are not limited to providing only access and operating personnel. In addition, the OCC interpretative ruling does not prohibit a national bank from creating excess capacity for the purpose of selling it.

Because the OCC's data processing interpretative ruling is substantially more expansive than OTS's regulation, OTS seeks comment on whether it should amend its data processing regulation to contain similar provisions.

Other Issues

Stored-Value Cards

OTS also requests comment on the appropriate regulatory response to stored-value cards. These devices provide for the storage and transfer of money on credit-card-like devices featuring a magnetic strip or embedded computer chip. The systems created to handle these cards, and the legal obligations that attach to the issuers, users, and others may vary in different situations. OTS regulations are silent on stored-value technology.[25]

These cards currently are the subject of analysis at the other banking agencies. The Federal Reserve Board is assessing the application of Regulation E to stored-value cards.[26] The Federal Deposit Insurance Corporation has released a legal opinion addressing whether the funds underlying a stored-value card are an insured deposit,[27] and has held a public hearing on other questions concerning stored-value cards and electronic banking.[28] The OCC has recently issued guidance on the risks associated with stored-value cards.[29]

Stored-value cards present a variety of issues. While OTS would like to receive comment on all aspects of this technology, commenters are requested to address the following questions: How extensively will the industry use stored-value cards? Do certain kinds of stored-value programs present greater safety and soundness concerns than others? Do stored-value cards present special issues that OTS should consider in examining the liabilities of a savings association? What kind of OTS guidance, if any, is appropriate for the industry?

Community Reinvestment Act

The ''borderless'' nature of electronic banking will also affect thrift responsibilities under the CRA, which encourages regulated financial institutions to help meet the credit needs of the local community in which they are chartered, consistent with safety and soundness. Comments are requested on all aspects of this issue, including the following questions. If a savings institution uses electronic banking as its sole method of customer contact and solicits deposits and loans throughout the United States, in what community is it chartered to do business for CRA purposes? If an institution has brick and mortar branches but also conducts a significant portion of its business electronically with customers beyond the jurisdiction of the branches, how should its community be defined? Should an institution's community under CRA be defined by the location of its customers, its offices, or both? How does an institution demonstrate that it is serving the credit needs of a widely dispersed customer base or when there is little or no geographic proximity between its deposit customers and its loan customers?

Additional Issues for Comment

OTS does not wish to limit comment to the above-cited issues and regulations. Rather, OTS welcomes all comments regarding any aspect of electronic banking, including the following:

(1) What OTS regulations should be eliminated or modified because they impede the use of safe and sound electronic technology?

(2) Should OTS impose any restrictions or requirements on banking operations offered over the Internet? For example, should OTS mandate a specific level of encryption, or should OTS rely on general safety and soundness principles to govern a safe system of operation?

(3) Should OTS-regulated institutions be permitted to open customer accounts over the Internet for individuals residing outside the United States or transfer funds over the Internet for account-holders to bank accounts outside the United States? What other restrictions should be imposed?

(4) What new technologies are being developed for electronic banking and how will these technologies impact the regulation of savings institutions?

(5) Should OTS address consumer protection rules in addition to the CRA in connection with a rulemaking on electronic banking?

IV. Request for Comments

OTS invites comment on all aspects of the proposal as well as specific comments on the proposed changes. Additionally, OTS seeks comments on all aspects of the ANPR.

V. Paperwork Reduction Act of 1995

The OTS invites comments on:

Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

The accuracy of the agency's estimate of the burden of the proposed information collection;

Ways to enhance the quality, utility, and clarity of the information to be collected; and

Ways to minimize the burden of the information collection including the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The reporting and recordkeeping requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503 with copies to the OTS, 1700 G Street, NW., Washington, D.C. 20552.

The recordkeeping requirements contained in this notice of proposed rulemaking are found at 12 CFR 557.4. The reporting requirements are found in the Federal Reserve Board's Regulation DD, 12 CFR Part 230. In part 557, OTS relies on the disclosure requirements applicable to savings associations under Regulation DD. The information is needed by the OTS in order to supervise savings associations and develop regulatory policy. The likely respondents/recordkeepers are OTS-regulated savings associations.

Estimated number of respondents/recordkeepers: 1,343.

Estimated average annual burden hours per recordkeeper/respondent: 1484.

Estimated total annual reporting/recordkeeping burden: 1,993,459.6.

Start-up costs to respondents/recordkeepers: None.

Records are to be maintained for the period of time the account is open, plus three years.

[25] OTS has concluded that, pursuant to the incidental powers doctrine, an association may market and sell one type of stored-value card. OTS Op. Chief Counsel (August 21, 1996) (prepaid telephone cards).

[26] See 61 FR 19696 (May 2, 1996).

[27] See FDIC Gen Counsel Op. No. 8, 61 FR 40490 (Aug. 2, 1996).

[28] See 61 FR 40494 (Aug. 2, 1996).

[29] See OCC Bulletin No. 96–48 (Sept. 10, 1996).

VI. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The proposal does not impose any additional burdens or requirements upon small entities and lowers several paperwork and other burdens on all savings associations.

VIII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule reduces regulatory burden. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings Associations.

12 CFR Parts 556 and 561

Savings associations.

12 CFR Part 557

Consumer protection, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend 12 CFR chapter V as follows:

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§§ 545.10–545.14 [Removed]

2. Sections 545.10, 545.11, 545.12, 545.13, and 545.14 are removed.

PART 556—STATEMENTS OF POLICY

3. The authority for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§ 556.12 [Removed]

4. Section 556.12 is removed.

5. Part 557 is added to read as follows:

PART 557—DEPOSITS

Sec.
557.1 General.
557.2 Applicability of law.
557.3 Interest and earnings.
557.4 Account records.

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 557.1 General.

(a) *Authority and Scope.* This part is issued by OTS under its general rulemaking and supervisory authority under the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.*

(b) *Deposit Powers.* A federal savings association may raise funds through accounts and may issue evidence of such accounts as authorized by section 5(b)(1) of the HOLA (12 U.S.C. 1464(b)(1)), the terms of its charter, and OTS regulations.

§ 557.2 Applicability of law.

(a) *Occupation of Field.* Pursuant to sections 4(a) and 5(a) of the HOLA, 12 U.S.C. 1463(a), 1464(a), OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when deemed appropriate: to facilitate the safe and sound operation of federal savings associations, to enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or to further other purposes of the HOLA. To enhance safety and soundness and to enable federal savings associations to conduct their operations in accordance with best practices and without undue regulatory duplication and burden, OTS hereby occupies the entire field of deposit-related regulations for federal savings associations. OTS intends to give the federal savings associations maximum flexibility to exercise their deposit-related powers in accordance with a uniform federal scheme of regulation. Accordingly, federal savings associations may exercise their deposit-related powers as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise effect their deposit activities, except to the extent provided in paragraph (c) of this section. For purposes of this section, ''state law'' includes any state statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative Examples.* The types of state laws preempted by paragraph (a) of this section include, without limitation, state laws purporting to impose requirements regarding:

(1) Abandoned and dormant accounts;

(2) Checking accounts;

(3) Disclosure requirements;

(4) Funds availability;

(5) Order of withdrawal from savings accounts;

(6) Service charges and fees, including dishonored checks; and

(7) Special purpose savings services.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the deposit-related activities of federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law;

(2) Tort law;

(3) Criminal law; and

(4) Any other law that OTS, upon review, finds:

(i) Furthers a vital state interest; and

(ii) Either has only an incidental effect on deposit-related activities or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

§ 557.3 Interest and earnings.

A federal savings association may pay interest on a savings account, whether in the form of a deposit or share, at a rate or anticipated rate of return determined at the time that the account is accepted, as provided in its charter and bylaws and the terms of the account. The rate or anticipated rate on a savings account either may be fixed or may vary according to a schedule, index, or formula specified at the time that an account is accepted.

§ 557.4 Account records.

(a) Each savings association should establish and maintain deposit documentation practices and records that demonstrate appropriate administration and monitoring of deposit-related activities. The savings association's records should include adequate evidence of ownership, balances, and all transactions involving the account.

(b) A federal savings association may treat the holder of record of an account as the owner, regardless of any notice to the contrary, until the account is transferred on the association's records.

PART 561—DEFINITIONS

6. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 561.42 [Amended]

7. Section 561.42 is amended by removing the phrase ''§§ 563.6 and 561.16.''

PART 563—OPERATIONS

8. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§§ 563.2–563.3, 563.6–563.10 [Removed]

9. Sections 563.2, 563.3, 563.6, 563.7, 563.9, and 563.10 are removed.

§ 563g.1 [Amended]

10. Section 563g.1 is amended by removing the last sentence of paragraph (a)(13).

Dated: March 24, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–8124 Filed 4–1–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWA–1]

RIN 2120–AA66

Proposed Modification of the Phoenix Class B Airspace Area; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period of a Notice of proposed rulemaking, Airspace Docket No. 94–AWA–1, which proposes to modify the Class B airspace area at Phoenix, AZ. The Notice provided for a 45-day comment period which closed on March 21, 1997. Several airspace user organizations requested that the comment period be extended, and stated that the additional time was necessary to fully analyze the proposal and prepare comments.

DATES: Comments must be received on or before May 2, 1997.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 94–AWA–1, 800 Independence Avenue, SW, Washington, DC 20591. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW, Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Nelson, 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:

Background

Airspace Docket No. 94–AWA–1, published on February 4, 1997 (62 FR 5188), proposes to modify the Class B airspace area at Phoenix, AZ.

Specifically, the Notice proposes to reconfigure several area boundaries; create new areas; and raise and/or lower the floors of several of the existing areas.

McDonnell Douglas Helicopter Systems, the Aircraft Owners and Pilots Association, the Arizona Pilots Association, and the Airport Director for the Falcon Field Airport, Mesa AZ, each submitted letters to the FAA requesting 45–90 additional days in which to comment on the Notice. These organizations cited to the amount of time that has lapsed since the informal airspace meeting in July 1993 and the complexity of the proposal, as a basis for requesting additional time within which to file comments.

Reopen Comment Period

The FAA encourages the greatest possible user participation in the regulatory process. The FAA is aware that many general aviation pilots receive notification of proposed rulemaking through, and submit comments through, airspace user organizations. In view of the complexity of the proposal and of the amount of time that has lapsed since the informal airspace meeting in 1993, the FAA recognizes that the above mentioned airspace user groups may need additional time for analysis and comment. The FAA believes, however, that an additional 30 days will provide these airspace user organizations adequate time in which to process the information and submit comments.

For the reasons stated above, the FAA will reopen the comment period on Airspace Docket No. 94–AWA–1 for an additional 30-days and comment must be filed on or before May 2, 1997.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

Issued in Washington, DC, on March 25, 1997.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–8277 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 97–ANM–02]

Proposed Amendment of Class E Airspace; Alamosa, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Alamosa, Colorado, Class E airspace to accommodate a new Instrument Landing System (ILS) and new Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) to San Luis Valley Regional/Bergman Field. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before May 30, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 97–ANM–02, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–532.1, Federal Aviation Administration, Docket No. 97–ANM–02, 1601 Lind Avenue SW,

Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ANM–02.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Alamosa, Colorado, to accommodate a new ILS SIAP and a new GPS SIAP to San Luis Valley Regional/Bergman Field. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from the surface of the earth, and from 700 feet or more above the surface of the earth, are published in Paragraph 6002 and Paragraph 6005, respectively, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM CO E2 Alamosa, CO [Revised]

Alamosa, San Luis Valley Regional/Bergman Field, CO
(Lat. 37°26′06″N, long. 105°52′01″W)
Alamosa VORTAC
(Lat. 37°20′57″N, long. 105°48′56″W)

Within a 5-mile radius of the San Luis Valley Regional/Bergman Field, and within 3 miles each side of the Alamosa VORTAC 127° and 335° radials extending from the 5-mile radius to 10.1 miles southeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM CO E5 Alamosa, CO [Revised]

Alamosa, San Luis Valley Regional/Bergman Field, CO
(Lat. 37°26′06″N, long. 105°52′01″W)
Alamosa VORTAC
(Lat. 37°20′57″N, long. 105°48′56″W)

That airspace extending upward from 700 feet above the surface within 8.7 miles northeast and 10.5 miles southwest of the Alamosa VORTAC 335° and 155° radials extending from 20.1 miles northwest to 10.5 miles southeast of the VORTAC, and within 1.8 miles northwest and 5.3 miles southeast of the Alamosa VORTAC 200° radial extending from the VORTAC to 14 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within an area bounded by a point beginning at lat. 37°37′00″N, long. 106°14′00″W; to lat. 37°44′00″N, long. 105°55′00″W; to lat. 37°52′00″N, long. 105°43′00″W; to lat. 37°49′00″N, long. 105°31′00″W; to lat. 37°20′30″N, long. 105°18′00″W; to lat. 37°03′30″N, long. 105°18′00″W; to lat. 37°01′30″N, long. 105°46′00″W; to lat. 37°05′25″N, long. 106°02′00″W; to lat. 37°09′00″N, long. 106°19′00″W; to lat. 37°17′00″N, long. 106°21′00″W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on March 19, 1997.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–8368 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Request for Comments Concerning Rule Governing Informal Dispute Settlement Procedures

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; request for public comments.

SUMMARY: The Federal Trade Commission (''the Commission'') is requesting public comment on its Rule Governing Informal Dispute Settlement Procedures (''Rule 703''). The Commission is also requesting comments about the overall costs and benefits of Rule 703 and its overall regulatory and economic impact as part of its systematic review of all current Commission regulations and guides.

Rule 703 specifies the minimum standards which must be met by any informal dispute settlement mechanism that is incorporated into the written warranty of a consumer product and which the consumer must use prior to pursuing any legal remedies in court.

DATES: Written comments will be accepted until June 2, 1997.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments should be identified as ''Rule 703—Comment.''

FOR FURTHER INFORMATION CONTACT: Carole I. Danielson, Investigator, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326-3115.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. Pursuant to these reviews, the Commission seeks information about the costs and benefits of the rules and guides under review, as well as their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission. At this time, the Commission solicits written public comments concerning its Rule Governing Informal Dispute Settlement Procedures, 16 CFR Part 703 (''Rule 703'').

A. Background

In enacting the Magnuson-Moss Warranty Act (''Warranty Act'' or ''Act''),[1] which governs written warranties on consumer products, Congress recognized the growing importance of alternatives to the judicial process in the area of consumer dispute resolution. In Section 110(a)(1) of the Act, Congress announced a policy of ''encourag[ing] warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms'' (''IDSMs'') and erected a framework for their establishment. As an incentive to warrantors to establish such IDSMs, Congress provided in Section 110(a)(3) that warrantors may incorporate into their written warranties a requirement that a consumer must resort to an IDSM before pursuing any of his or her legal remedies for breach of warranty. To ensure fairness to consumers, however, Congress also directed that, if a warrantor were to incorporate such a ''prior resort requirement'' into its written warranty, the warrantor must comply with the minimum standards set by the Commission for such IDSMs; Section 110(a)(2) directed the Commission to establish those minimum standards. Accordingly, on December 31, 1975, the Commission published its Rule Governing Informal Dispute Settlement Procedures, 16 CFR Part 703.[2]

Rule 703 contains extensive procedural standards that must be followed by every warrantor who wishes to incorporate an IDSM, through a prior resort clause, into the terms of a written warranty. These standards include requirements concerning the mechanism's structure (e.g., funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism's procedures for resolving disputes (e.g., notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule is unique among Commission rules because it is a voluntary regulation; that is, the Rule applies only to those firms that choose to be bound by it by placing a ''prior resort requirement'' in their warranties. The Act does not require warrantors to set up IDSMs. Furthermore, a warrantor is free to set up an IDSM that does not comply with Rule 703 as long as the warranty does not contain a ''prior resort requirement.''

In the twenty years since Rule 703 was promulgated, most of the activity in developing mediation and arbitration programs for the resolution of consumer warranty disputes has taken place in the automobile industry. It is unclear how many companies, if any continue to participate in a Rule 703 mechanism.[3] Most vehicle manufacturers no longer include a ''prior resort requirement'' in their warranties; thus, they and any dispute resolution programs in which they participate are not required to comply with Rule 703.

The fact that most warrantors do not include ''prior resort requirements'' in their warranties does not mean, however, that warrantors have abandoned informal dispute resolution programs. On the contrary, due to the terms of state lemon laws (as explained more fully below), all major automakers participate in either manufacturer-sponsored or state-run dispute resolution programs that frequently are modeled on the minimum standards set out in Rule 703 even though they are not required to do so under any provision of federal law. Today, most automobile warranty disputes are handled either by state-operated programs not subject to Rule 703 or by private programs which choose not to operate under the Rule. As a result of these trends, the Commission's enforcement responsibility for Rule 703 has virtually ceased.

Since Rule 703 was promulgated, warrantors, consumer groups, state governments and IDSMs have criticized the Rule. Some warrantors and IDSMs have argued that the Rule is unduly burdensome, discourages the formation of new IDSMs, and hinders the efficient operation of existing ones. These critics have alleged high compliance costs of the procedural provisions and burdensome recordkeeping requirements. Other parties, by contrast, have asserted that the Rule is insufficiently stringent in many respects. For example, consumer groups and state law enforcement offices have alleged that decisionmakers are not adequately trained and that the recordkeeping requirements are insufficient to evaluate the programs' performance. Finally, because few, if any, programs actually operate under Rule 703, some might argue that the Rule no longer serves a useful purpose and has become irrelevant to today's market.

In 1986, the Commission decided to evaluate Rule 703 in an effort to address criticisms of the Rule and to develop proposals for reform. In order to assist in this evaluation, the Commission conducted a ''regulatory negotiation'' with an advisory committee of 25 organizations representing the major

[1] 15 U.S.C. 2301 *et seq.* (1975).

[2] 40 FR 60,190.

[3] General Motors ceased incorporating an IDSM in its warranty beginning with its 1986 models and no longer operates a 703 program. Ford discontinued operation under Rule 703 with its 1988 model year cars. Chrysler discontinued its Rule 703 program with its 1991 models. Similarly, American Honda, Nissan, Volvo, and other auto manufacturers have all discontinued operating Rule 703 programs. Although they are not required to do so, the IDSMs for the major auto manufacturers continue to file annual audits with the Commission. These audits are placed on the public record and can be obtained from the FTC's Public Reference Branch, Room 130, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580; (202) 326-2222. (FTC File No. R711002)

interests affected by the Rule.[4] The Commission agreed to publish a Notice of Proposed Rulemaking (''NPR'') to amend Rule 703 if the advisory committee could reach a consensus recommendation regarding revisions. The Commission agreed to incorporate any consensus recommendation coming out of the negotiated rulemaking into any NPR. However, the regulatory negotiation was unable to reach a consensus on a proposed revision of the Rule and concluded its meetings in 1987.[5] Since no consensus recommendation was reached, the Commission did not publish an NPR.

A second evaluation began in 1988, after the auto manufacturers petitioned the Commission to initiate a rulemaking proceeding to amend Rule 703.[6] Among other things, the petitioners proposed that the Commission institute a national certification program for IDSMs and that the Commission preempt those provisions of state laws which impose requirements upon warrantors' private IDSMs which differ from the requirements specified in Rule 703. This petition was followed by a Memorandum in Opposition to the petition filed by the Attorneys General of 41 states.[7] Because of the continuing interest in the issues surrounding Rule 703 (as evidenced by the petition and the Memorandum in Opposition), the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') in order to generate a broad range of views on which dispute resolution practices are sound and could form the basis for possible revisions to the Rule.[8] In addition, the Commission's ANPR requested economic or cost data to buttress the petitioners' allegations of injury due to non-uniformity and the costs and benefits associated with a national certification program. On June 13, 1991, the Commission denied the automakers' petition because the record failed to provide the adequate factual basis regarding the costs of non-uniformity that would have been necessary to justify a rulemaking procedure, preemption of state laws governing IDSMs, or federal certification of IDSMs.[9]

Rule 703 is brought into play only if the warranty includes a ''prior resort requirement.'' Because few warrantors have a ''prior resort requirement'' in their warranties, they and their dispute resolution programs are not governed by Rule 703. Nonetheless, although few warrantors operate Rule 703 IDSMs today, there is a recurring issue that arise from the interplay between Rule 703 and state ''lemon laws.'' Many state lemon laws, paralleling Section 110(a)(3) of the Warranty Act, prohibit the consumer from pursuing any state lemon law rights in court unless the consumer first seeks a resolution of the claim to the manufacturer's (or a state-operated) IDSM.[10] Those statutes also provide that the consumer is required to use the manufacturer's IDSM only if it complies with the FTC's standards set out in Rule 703. Thus, in effect, these states incorporate Rule 703 into their lemon laws.[11] A threshold question for many state lemon law suits is whether the IDSM complies with Rule 703 and thus whether the consumer must use that IDSM or may proceed directly to a court action.

B. Issues for Comment

There are issues surrounding Rule 703 that continue to be of interest to many parties. A review of the Rule and its provisions, including the specific issue of the interplay of Rule 703 and lemon law litigation, will be helpful in determining what direction the Commission might take in the area of setting standards for informal dispute settlement procedures. Therefore, at this time, the Commission solicits written public comments on the following questions with regard to Rule 703:

1. Is there a continuing need for Rule 703? Does the Rule continue to serve a useful purpose?
   (a) What benefits has the Rule provided to consumers?
   (b) Has the Rule imposed costs on consumers?
2. What changes, if any, should be made to Rule 703 to increase the benefits of the Rule to consumers? How would these changes affect the costs that the Rule imposes on firms subject to its requirements?
3. What significant burdens or costs, including costs of compliance, has Rule 703 imposed on firms subject to requirements? Has the Rule provided benefits to such firms?
4. What changes, if any, should be made to Rule 703 to reduce the burdens or costs imposed on firms subject to its requirements? How would these changes affect the benefits provided by the rule?
5. Does Rule 703 overlap or conflict with other federal, state, or local government laws or regulations?
6. Since Rule 703 was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule? Are there ways in which new electronic technology, such as the Internet, could be used to further the purpose of the Rule?
7. What are the aggregate costs and benefits of Rule 703? Are there provisions in the Rule that are not necessary to implement the Magnuson-Moss Warranty Act or that have imposed costs not outweighed by benefits? Who has benefited and who has born the costs? Have the costs or benefits of the Rule changed over time?
8. Many state lemon laws require that, before the consumer pursues any legal remedies in court, the consumer first must resort to the manufacturers' informal dispute resolution mechanism if that mechanism complies with Rule 703.
   (a) What costs and benefits, if any, result to the parties in a state lemon law dispute from Rule 703 with respect to the issues of:
   (1) Whether a particular IDSM complies with the Rule; and
   (2) whether a plaintiff must first resort to such an IDSM before bringing suit in state court.
   (b) What changes, if any, could be made to Rule 703 that might minimize burdens and maximize benefits to parties in state lemon law disputes?

List of Subjects in 16 CFR Part 703

Warranties, trade practices.

Authority: 15 U.S.C. 41–58.

[4] The notice of intent to form an advisory committee for regulatory negotiation appears at 51 FR 5205 (February 12, 1986). The notice of formation of the advisory committee and notice of the first meeting appears at 51 FR 29666 (August 20, 1986).

[5] The record of that negotiated rulemaking and the facilitators' final report were placed on the public record and is available through the FTC's Public Reference Branch, Room 130, 6th and Pennsylvania, N.W., Washington, D.C. 20580; 202–326–2222. (FTC File No. R711002)

[6] On April 11, 1988, the Motor Vehicle Manufacturers Association of the United States, Inc. and the Automobile Importers of America, Inc. filed their petition together with a proposed revised Rule. The petition and the record of the ANPR which followed is available through the FTC's Public Reference Branch, Room 130, 6th and Pennsylvania, N.W., Washington, D.C. 20580; 202–326–2222. (FTC File No. R711002)

[7] The Memorandum in Opposition was filed on June 22, 1988.

[8] 54 FR 21070 (May 16, 1989).

[9] The record for the ANPR proceeding was placed on the public record and is available through the FTC's Public Reference Branch, Room 130, 6th and Pennsylvania, N.W., Washington, D.C. 20580; 202–326–2222. (FTC File No. R711002)

[10] ''Lemon Laws'' entitle the consumer to obtain a replacement or a refund for a defective new car if the warrantor is unable to repair the car after a reasonable number of repair attempts.

[11] Some state lemon laws also require that the IDSM comply with additional state standards in addition to complying with the Rule 703 provisions.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–8411 Filed 4–1–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 253

RIN 1010–AC33

Oil Spill Financial Responsibility for Offshore Facilities; Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects the proposed regulation published in the **Federal Register** on March 25, 1997 (62 FR 14052). Section 253.44 of the proposed regulation (62 FR 14064) is revised to clarify the intended compliance date.

EFFECTIVE DATE: April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond L. Beittel, Performance and Safety Branch, at (703) 787–1591.

SUPPLEMENTARY INFORMATION: MMS published a proposed rule on March 25, 1997 (62 FR 14052), which addressed new requirements for demonstrating oil spill financial responsibility for cleanup and damages from oil discharges from oil exploration and production facilities and associated pipelines. The rule will apply to operations in: the Outer Continental Shelf; State waters seaward of the line of ordinary low water along that portion of the coast that is in direct contact with the open sea; and in coastal inland waters, such as bays and estuaries, seaward of the line of ordinary low water along that portion of the coast that is not in direct contact with the open sea. This rule implements the authority of the Oil Pollution Act of 1990 (OPA).

Need For Correction

As published, the proposed regulation at § 253.44 contains an error that may be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on March 25, 1997, of the proposed regulation, which was the subject of FR Doc 97–7270, is corrected as follows:

§ 253.44 [Corrected]

On page 14064, in the first column, in § 253.44, is corrected to read as follows:

§ 253.44 When must I comply with this regulation?

You must submit to MMS your evidence of OSFR for all the COF's on all the leases, permits, and RUE's for which you are the designated applicant *no later than 60 days after the publication date of the final regulation.*

* * * * *

Date: March 27, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–8269 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

[APG Reg 1–1]

Protests, Picketing, and Other Similar Demonstrations on the Installation of Aberdeen Proving Ground, MD

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: This action will establish 32 CFR Part 552, Subpart P, Protests, Picketing, and Other Similar Demonstrations, and authenticates Aberdeen Proving Ground Regulation, APG Reg. 1–1. This subpart will establish policies, responsibilities, and procedures for protests, picketing, and other similar demonstration on the Aberdeen Proving Ground military reservation. This regulation will be applicable to all personnel assigned, residing, working, or visiting on the Aberdeen Proving Ground reservation.

DATES: Comments must be received no later than May 2, 1997.

ADDRESSES: Commander, U.S. Army Test and Evaluation Command, Office of the Chief Counsel and Staff Judge Advocate, Aberdeen Proving Ground, Maryland 21005.

FOR FURTHER INFORMATION CONTACT: Laura R. Haug, Deputy Chief Counsel, telephone (410) 278–1105 or 1107.

SUPPLEMENTARY INFORMATION: Supplementation of this subpart by subordinate units is prohibited.

Executive Order 12291

This proposed rule is not a major rule as defined by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 552

Federal buildings and facilities.

It is proposed to add Subpart P to 32 CFR Part 552 as set forth below:

Roslyn M. Glantz,

Colonel, U.S. Army, Aberdeen Proving Ground Garrison Commander.

32 CFR Part 552 is amended by adding a new Subpart P as follows:

Subpart P—Protests, Picketing, and Other Similar Demonstrations on the Installation of Aberdeen Proving Ground, Maryland

Sec.
552.211 Purpose.
552.212 Scope.
552.213 Policy.
552.214 Procedures.
552.215 Responsibilities.
552.216 Violations.

Authority: 18 U.S.C. Sec. 1382.

Subpart P—Protests, Picketing, and Other Similar Demonstrations on the Installation of Aberdeen Proving Ground, Maryland

§ 552.211 Purpose.

This subpart establishes policies, responsibilities, and procedures for protests, picketing, and other similar demonstrations on the Aberdeen Proving Ground installation.

§ 552.212 Scope.

(a) The provisions of this subpart apply to all elements of U.S. Army Garrison, Aberdeen Proving Ground (USAGAPG), and the supported organizations and activities on the Aberdeen and Edgewood Areas of Aberdeen Proving Ground.

(b) The provisions of this subpart cover all public display of opinions made by protesting, picketing, or any other similar demonstration.

(c) The provisions of this subpart are applicable to all people, military and civilian employees, and all visitors, family members, or others, entering upon or present at Aberdeen Proving Ground.

§ 552.213 Policy.

(a) Aberdeen Proving Ground is a non-public forum and is NOT open for expressive activity. Aberdeen Proving Ground is a military installation under the exclusive federal jurisdiction at which official business of the federal government is conducted, including military training, testing of weapon systems and other military equipment, and other official business.

(b) On Aberdeen Proving Ground, except for activities authorized under 5 United States Code Chapter 71, Labor Management Relations, it is unlawful for any person to engage in any public displays of opinions made by protesting, picketing or any other similar demonstration without the approval of the Commander, U.S. Army Garrison, Aberdeen Proving Ground. Therefore, unless prior approval has been obtained as outlined below in 32 CFR 552.214, it will be unlawful for any person on Aberdeen Proving Ground to:

(1) Engage in protests, public speeches, marches, sit-ins, or demonstrations promoting a point of view.

(2) Interrupt or disturb the testing and evaluating of weapon systems, or any training, formation, ceremony, class, court-martial, hearing, or other military business.

(3) Obstruct movement on any street, road, sidewalk, pathway, or other vehicle or pedestrian thoroughfare.

(4) Utter to any person abusive, insulting, profane, indecent, or otherwise provocative language that by its very utterance tends to excite a breach of the peace.

(5) Distribute or post publications, including pamphlets, newspapers, magazines, handbills, flyers, leaflets, and other printed materials, except through regularly established and approved distribution outlets and places.

(6) Circulate petitions or engage in picketing or similar demonstrations for any purpose.

(7) Engage in partisan political campaigning or electioneering.

(8) Disobey a request from Department of Defense police, other government law enforcement officials (e.g., Federal, State, or local law enforcement officials), military police, or other competent authority to disperse, move along or leave the installation.

(c) In appropriate cases, the Commander, U.S. Army Garrison, Aberdeen Proving Ground may give express written permission for protests, picketing, or any other similar demonstrations on Aberdeen Proving Ground property outside the gates adjacent to the installation, borders, only if the procedures outlined below in 32 CFR 552.214 are followed.

§ 552.214 Procedures.

(a) Any person or persons desiring to protest, picket, or engage in any other similar demonstrations on Aberdeen Proving Ground must submit a written request to the Commander, U.S. Army Garrison, Aberdeen Proving Ground, ATTN: STEAP–CO, 2201 Aberdeen Boulevard, Aberdeen Proving Ground, Maryland 21005–5001. The request must be received at least 30 calendar days prior to the demonstration, and it must include the following:

(1) Name, address, and telephone number of the sponsoring person or organization (If it is an organization, include the name of the point of contact.)

(2) Purpose of the event.

(3) Number of personnel expected to attend.

(4) Proposed date, time, location and duration of the event.

(5) Proposed means of transportation to and from APG.

(6) Proposed means of providing security, sanitary services and related ancillary services to the participants.

(b) Based on the Commander's concerns for discipline, mission accomplishment, protection of property, and the safeguarding of the health, morale, and welfare of the APG community, the Commander will determine whether to grant the request and, if granted, any limitations as to where and when it will take place.

§ 552.215 Responsibilities.

(a) Director, Law Enforcement and Security, U.S. Army, Garrison Aberdeen Proving Ground, will furnish police support as needed.

(b) Chief Counsel and Staff Judge Advocate, U.S. Army Test and Evaluation Command, will provide a legal review of the request.

§ 552.216 Violations.

(a) A person is in violation of the terms of this subpart if:

(1) That person enters or remains upon Aberdeen Proving Ground when that person is not licensed, invited, or otherwise authorized by the Commander, U.S. Army Garrison, Aberdeen Proving Ground pursuant to the terms of § 552.214; or

(2) That person enters upon or remains upon Aberdeen Proving Ground for the purpose of engaging in any activity prohibited or limited by this subpart.

(b) All persons (military personnel, Department of the Army civilian employees, civilian, and others) may be prosecuted for violating the provisions of this subpart. Military personnel may be prosecuted under the uniform code of military justice. Department of the Army civilian employees may be prosecuted under U.S.C. 1832, and/or disciplined under appropriate regulations. Civilians and others may be prosecuted under U.S.C. 1382.

(c) Administrative sanctions may include, but are not limited to, bar actions including suspension of access privileges, or permanent exclusion from Aberdeen Proving Ground.

[FR Doc. 97–8335 Filed 4–1–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE20

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Blackburn's Sphinx Moth From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for Blackburn's sphinx moth (*Manduca blackburni*). This species was found on the Hawaiian islands of Kauai, Oahu, Molokai, Maui, and Hawaii, but is currently known only from one population on Maui. This moth has been affected or is currently threatened by one or more of the following; habitat degradation, introduced animals, and biological pest control. Due to its currently restricted distribution and small population size, this species is also threatened by naturally occurring events. This proposal, if made final, would implement the protection provisions provided by the Act for this moth.

DATES: Comments from all interested parties must be received by June 2, 1997. Public hearing requests must be received by May 19, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Pacific Islands Ecoregion Manager, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai,

Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwest end of the chain (the Northwestern Hawaiian Islands). Each island was built sequentially from frequent, voluminous basaltic lava flows (Stearns 1985). The youngest island, Hawaii, is still volcanically active, and retains its form of coalesced (consolidated), gently sloping, unweathered shield volcanoes. Vulcanism on the older islands has long since ceased, with subsequent erosion forming heavily weathered valleys with steep walls, and well-developed streams and soils (Department of Geography 1983).

This range of topographies creates a great diversity of climates. Windward (northeastern) slopes can receive up to 1,000 centimeters (cm) (400 inches (in.)) of rain per year, while some leeward coasts that lie in the rain shadow of the high volcanoes are classified as deserts, receiving as little as 25 cm (10 in.) of rain annually. The range of moisture regimes, combined with an elevational range from coastal (0–300m (0–1000ft)) to alpine (over 3000 meters (m) (10,000 feet)(ft)) creates a diverse mosaic of natural plant communities, with nearly all of the world's plant formation types represented (Gagne and Cuddihy 1990). These habitats and plant communities in turn support one of the most unique arthropod faunas in the world, with an estimated 10,000 endemic species (Howarth 1990). Unusual characters of Hawaii's native arthropod fauna include the presence of relictual (remnant) groups, the absence of social insects such as ants and termites, generic endemism (the uniqueness of its genera), extremely small geographic ranges, large species radiations (significant divergence in species diversity from primary forms), novel (unusual) ecological shifts, flightlessness, and loss of certain antipredator behaviors (Zimmerman 1948; 1970; Simon *et al.* 1984; Howarth 1990).

Discussion of the Animal Taxon Included in This Proposed Rule

Blackburn's sphinx moth (*Manduca blackburni*) is Hawaii's largest native insect, with a wingspan of up to 120 millimeters (mm) (5 in.). Like other sphinx moths (family Sphingidae) it has long, narrow forewings, and a thick, spindle-shaped body tapered at both ends. It is grayish brown in color, with black bands across the apical margins of the hind wings, and five orange spots along each side of the abdomen. The larva is a typical large ''hornworm'' caterpillar, with a spine-like process on the dorsal (upper) surface of the eighth body segment. Caterpillars occur in two color forms, bright green, or a grayish morph. Both color morphs have scattered white speckles throughout the dorsum (back or top), with the lateral (side) margin of each body segment bearing a horizontal white stripe, and segments 4–10 bearing diagonal stripes on the lateral margins (Riotte 1986).

Blackburn's sphinx moth was described by Butler in 1880 as *Protoparce blackburni*, and named in honor of the Reverend Thomas Blackburn who collected the first specimens. It was later synonymized with the tomato hornworm (*Sphinx celeus* Hubner = *Sphinx quinquemaculatus* Hawthorn) by Meyrick (1899), and then treated as a subspecies (*blackburni*) by Rothschild and Jordan (1903). Zimmerman (1958) placed both subspecies in the genus *Phlegethontius*. Riotte (1986) demonstrated that Blackburn's sphinx moth is a distinct taxon in the genus *Manduca*, endemic to the Hawaiian Islands, and reinstated it as a full species, *Manduca blackburni*. D'Abrera (1986) tentatively considered *Manduca blackburni* to be a synonym of *Manduca quinquemaculata*, but subsequent authors (Nishida 1992; Howarth and Mull 1992) have disagreed with this view, and the findings of Riotte (1986) are accepted here. Several different common names have also been used for this species, including the tomato hawk-moth (Swezey 1924b), tobacco horn worm (Browne 1941), the Hawaiian tobacco worm (Timberlake *et al.* 1921; Swezey 1931), the Hawaiian tomato hornworm (Fullaway and Krauss 1945; Zimmerman 1958), the Blackburn hawk moth (Hawaiian Entomological Society (HES) 1990; Howarth and Mull 1992), and Blackburn's sphinx moth (49 FR 21664). In order to avoid the confusion of these common names inconsistently associated with different scientific names, and because the name ''Blackburn's sphinx moth'' has been used before in the **Federal Register**, that name is used here.

In Hawaii, Blackburn's sphinx moth can be confused with other large moths. Adult Blackburn's sphinx moths can be distinguished from the related sweetpotato hornworm (*Herse cingulata*) by the orange rather than white dorsal spots on the abdomen with black borders on both the anterior (front) and posterior (rear) margins of each segment, and the broader, marginal black band on the hind wing. Blackburn's sphinx moth is closely related to the North American tomato hornworm (*Manduca quinquemaculata*) and has been confused with this species. The larvae of Blackburn's sphinx moth differ from those of the tomato hornworm and tobacco hornworm (*Manduca sexnotata*) by having two dark longitudinal stripes on the head capsule. Adults of Blackburn's sphinx moth can be distinguished from the tomato hornworm and tobacco hornworm by the presence of crescent-shaped white markings along the inner border of the black bands on the forewing.

Larvae of Blackburn's sphinx moth feed on plants in the nightshade family (Solanaceae). The natural host plants are native shrubs in the genus *Solanum* (popolo), and endemic trees in the genus *Nothocestrum* ('aiea) (Riotte 1986). Larvae voraciously consume leaves, stems, flowers and buds of these plants (Betsy Gagne, Hawaii Department of Land and Natural Resources, pers. comm., 1994). Several other host plants recorded for this species are not native to the Hawaiian Islands, and include *Nicotiana tabacum* (commercial tobacco), *Nicotiana glauca* (tree tobacco), *Solanum melongena* (eggplant), *Lycopersicon esculentum* (tomato), and possibly *Datura stramonium* (Jimson weed) (Riotte 1986). Development from egg to adult can take as little as 56 days (Williams 1947), but pupae may aestivate (lay dormant) in the soil up to a year (Williams 1931; B. Gagne, pers. comm., 1994). Adult moths can be found throughout the year, but seem to be most active during two periods, January to April, and July to October (Riotte 1986).

Blackburn's sphinx moth has been recorded from the islands of Kauai, Oahu, Molokai, Maui, and Hawaii, and collected from sea level to 760 m (2,500 ft) elevation. Most historical records were from coastal or dryland forest habitats in areas receiving less than 120 cm (50 in.) annual rainfall. On the island of Kauai, Blackburn's sphinx moth was recorded only from the coastal area of Nawiliwili. Populations were known from Honolulu, Honouliuli, and Makua on leeward Oahu, and Kamalo, Mapulehu, and Keopu on Molokai. On Hawaii, it was known from Hilo, Pahala, Kalaoa, Kona, and Hamakua. It appears that this moth was historically most common on Maui, where it was recorded from Kahului, Spreckelsville, Makena, Wailuku, Kula, Lahaina, and ''West Maui.'' It is now known only from a single population on Maui.

Very few specimens of this species have been seen since 1940, and after a concerted effort by staff at the B.P. Bishop Museum to relocate this species in the late 1970's, it was considered to

be extinct (Gagne and Howarth 1985; 49 FR 21664). In 1984, a single population was discovered at Kanaio on East Maui. The population is located on State-owned land, which includes a natural area reserve and an area used by the Hawaii National Guard for military training. Between 1986 and 1991, a total of six specimens were taken in light traps at Kokomo, Maui, 16 kilometers (km) (10 miles (mi)) from Kanaio. This may indicate the presence of an additional population (P. Conant, Hawaii Department of Agriculture, pers. comm., 1994), although adult moths are strong fliers and these specimens could have originated at the Kanaio population. Larvae have been observed feeding on *Nothocestrum latifolium* ('aiea) and tree tobacco (Howarth, Bishop Museum, *in litt.*, 1994), but the number of larvae and adults produced each year is unknown. While Blackburn's sphinx moth will colonize and utilize alien (non-native) plants for development, the only persistent population is associated with species of *Nothocestrum*, and it is believed that these host plant populations are a requirement for the existence of this moth (B. Gagne, pers. comm. 1994).

The major threats to this species are predation by alien parasitoids and ants, habitat degradation through the loss of its natural host plant, and due to the single existing population, extinction by a naturally occurring event. Blackburn's Sphinx moth is also susceptible to over-collecting by private and commercial collectors. These threats will be discussed in detail in the ''Summary of Factors Affecting this Species'' section.

Previous Federal Action

An initial comprehensive notice of review for invertebrate animals was published May 22, 1984 (49 FR 21664), in which Blackburn's sphinx moth was considered a category 3A taxon. The Category 3A taxa classification that existed at that time were those species for which the Service had persuasive evidence of extinction. The Service published an updated notice of review for animals on January 6, 1989 (54 FR 554). Although Blackburn's sphinx moth had been rediscovered by 1985, the 1989 notice of review again listed this taxon as category 3A. In the November 15, 1994, notice of review for animals (59 FR 59020) this species was reclassified as a C1 or a candidate species for listing and was maintained as a candidate in the most recent notice of review published on February 28, 1996 (61 FR 7596).

The processing of this proposed rule conforms with the Service's final Fiscal Year 1997 listing priority guidance published in the **Federal Register** on December 5, 1996, (61 FR 64475).

Summary of Factors Affecting This Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Blackburn's sphinx moth (*Manduca blackburni* (Butler)) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Despite the fact that Blackburn's sphinx moth can feed on a variety of solanaceous plants, including alien weeds in disturbed areas, the only persistent population is associated with the native tree, *Nothocestrum latifolium*, which is believed to be required for the survival of this species. *Nothocestrum* is an endemic genus of four species confined to the Hawaiian islands (Symon 1990). All four species, *Nothocestrum latifolium, N. breviflorum, N. longifolium* and *N. peltatum* occur in dry to mesic (medium moisture supply) forests, the habitat in which Blackburn's sphinx moth has been most frequently recorded. This dry forest habitat has been severely degraded due to past and present land management practices including ranching, deliberate introduction of alien plants and animals, and agricultural development (Cuddihy and Stone 1990). Due to these factors, *Nothocestrum peltatum* on Kauai and *N. breviflorum* on Hawaii are now federally listed as endangered species (59 FR 3904; 59 FR 55770). *Nothocestrum latifolium* occurs on Kauai, Oahu, Molokai, Lanai, and Maui. Although it is not presently a protected species, it is declining and uncommon on all these islands (Hawaiian Heritage Program (HHP) 1993; Medeiros *et al.* 1993). The stand of trees at Kanaio, one of the largest in the State (Medeiros *et al.* 1993), may be the reason it still supports a population of Blackburn's sphinx moth (Art Medeiros, National Biological Survey, pers. comm., 1994).

Although *Nothocestrum latifolium* presently occurs at moderate densities at Kanaio (HHP 1993), there has been a complete lack of seedling survival (Medeiros *et al.* 1993) and the stand is being degraded by goats (*Capra hircus*) (Medeiros *et al.* 1993; F.G. Howarth, pers. comm., 1994; Stephen L. Montgomery, Hawaii Conservation Council, pers. comm., 1994). Goats have played a major role in the destruction of dryland and mesic forests on the Hawaiian islands (Stone 1985; van Riper and van Riper 1982).

Bocconia frutescens (tree poppy) is an alien shrub/tree that is spreading at Kanaio. Tree poppy was first discovered in the Hawaiian Islands in 1920 and is now established in dry forests on Maui and mesic forests on Hawaii (Medeiros *et al.* 1993). This fast growing shrub, the seeds of which are dispersed by fruit-eating birds, threatens the host plant of Blackburn's sphinx moth primarily through displacement and shading of immature plants (Medeiros *et al.* 1993; B. Gagne, pers. comm., 1994). *Bocconia frutescens* has been designated as a noxious weed for eradication and/or control by the Hawaiian Department of Agriculture (Medeiros *et al.* 1993).

B. *Overutilization for commercial, recreational, scientific,* or *educational purposes.* Rare butterflies and moths are highly prized by collectors (Morris *et al.* 1991), who often take all individuals obtainable (59 FR 18350; USDJ, *in litt.* 1993). Unrestricted collecting and handling for scientific purposes are known to impact populations of other species of rare Lepidoptera (butterflies and moths) (Murphy 1988) and are considered significant threats to Blackburn's sphinx moth. There are examples of rewards being offered for specimens of other rare Hawaiian sphinx moths such as *Tinostoma smargditis* (Zimmerman 1958) and high prices paid for very rare specimens (Morris *et al.* 1991). Large scale poaching rings dealing in rare and endangered Lepidopterans have been investigated by the Department of Justice resulting in the indictment of several individuals (USDJ, *in litt.* 1993). Specimens of Blackburn's sphinx moth have already been secured and traded by collectors (David Preston, B.P. Bishop Museum, pers. comm., 1994).

C. *Disease and predation.* The geographic isolation of the Hawaiian Islands has restricted the number of naturally colonizing arthropods and resulted in the development of an unusual fauna. An unusually small number (15 percent) of the known families of insects are represented by native Hawaiian species. Some groups that often dominate continental arthropod faunas, such as social Hymenoptera (group nesting ants, bees, and wasps), are entirely absent from the native Hawaiian fauna (Howarth 1990). Commercial shipping and air cargo to Hawaii has resulted in the establishment of over 2,500 species of alien arthropods (Howarth 1990;

Howarth *et al.* 1994), with a continuing establishment rate of 10–20 new species per year (Beardsley 1962; 1979). In addition to the accidental establishment of alien species, alien predators and parasites used for biological control of pests have been purposefully imported and released by individuals, Republic, Territorial, State, and Federal agencies, since 1865. Between 1890 and 1985, 243 alien species were introduced, sometimes with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988; Lai 1988). Alien arthropods, whether purposefully introduced or adventive (opportunistically introduced), pose the most serious threat to Hawaii's native insects through direct predation and parasitism, as well as competition for food or space (Howarth and Medeiros 1989; Howarth and Ramsay 1991).

Ants are not a natural component of Hawaii's arthropod fauna, and endemic insect species evolved in the absence of predation pressure from ants (Reimer 1993). Ants can be particularly destructive predators because of their high densities, recruitment behavior (ability to recruit other individuals to exploit a food source), aggressiveness, and broad range of diet (Reimer 1993). Ants are known to affect prey populations independent of prey density, and can locate and destroy isolated individuals and populations (Nafus 1993a). At least 36 species of ants are known to be established in the Hawaiian Islands, and three particularly aggressive species have had severe effects on the native insect fauna (Zimmerman 1948).

By the late 1870's, the big-headed ant (*Pheidole megacephala*) was present in Hawaii and its predation on native insects was noted by Perkins (1913), ''It may be said that no native Hawaiian Coleoptera insect can resist this predator, and it is practically useless to attempt to collect where it is well established. Just on the limits of its range one may occasionally meet with a few native beetles, e.g. species of *Plagithmysus*, often with these ants attached to their legs and bodies, but sooner or later they are quite exterminated from these localities.'' With few exceptions, native insects, including most moths, have been eliminated from areas where the big-headed ant is present (Perkins 1913; Gagne 1979; Gillespie and Reimer 1993). This predator generally does not occur at elevations higher than 600 m (2,000 ft), and is also restricted by rainfall, rarely being found in particularly dry (less than 38–50 cm (15–20 in.) annually) or wet areas (more than 250 cm (100 in.) annually) (Reimer *et al.* 1990). It has been observed predating on eggs and all instars (developmental stages) of native Lepidoptera caterpillars, and can completely exterminate populations (Illingworth 1915; Zimmerman 1958). This ant occurs at Kanaio (Medeiros *et al.* 1993) and is a direct threat to the population of Blackburn's sphinx moth.

The Argentine ant (*Iridomyrmex humilis*) was discovered on the island of Oahu in 1940 (Zimmerman 1941) and is now established on all the main islands. Unlike the big-headed ant, the Argentine ant is primarily confined to elevations greater than 600 m (2,000 ft) in areas of moderate rainfall (Reimer *et al.* 1990). This species has been demonstrated to reduce, or even eliminate populations of native arthropods, including Lepidopterans, at high elevations in Haleakala National Park on Maui (Cole *et al.* 1992). In the Kula area of Maui, within 6 km (10 mi) of the population of Blackburn's sphinx moth population, Argentine ants have been shown to be significant predators on fruit flies (Wong *et al.* 1984).

The long-legged ant (*Anoplolepis longipes*) appeared in Hawaii in 1952 and now occurs on Oahu, Maui, and Hawaii (Reimer *et al.* 1990). It inhabits low elevation (less than 600 m (2,000 ft)), rocky areas of moderate rainfall (less than 250 cm (100 in.) annually) (Reimer *et al.* 1990). Direct observations indicate that Hawaiian arthropods are susceptible to predation by this species (Gillespie and Reimer 1993) and Hardy (1979) documented the disappearance of most native insects from Kipahulu Stream on Maui after the area was invaded by the long-legged ant.

At least two species of fire ants, *Solenopsis geminita* and *Solenopsis papuana*, are also important threats to native Hawaiian fauna (Reagan 1986; Gillespie and Reimer 1993) and occur on all the major islands (Reimer *et al.* 1990). Ants, including the fire ant, are considered to be the most important and consistent mortality factor on eggs and probably larvae of the butterfly *Hypolimnas bolina* in Guam, where both predator and prey are native (Nafus 1993a; 1993c). *S. geminita* is also known to be a significant predator on pest fruit flies in Hawaii (Wong and Wong 1988). *S. papuana* is the only abundant, aggressive ant that has successfully invaded intact mesic forest above 600 m (2,000 ft) and is still expanding its range in Hawaii (Reimer 1993).

Hawaii also has a limited fauna of native Hymenoptera parasitoids. Only two species in the family Braconidae are native to the islands (Beardsley 1961) and neither are known to attack Blackburn's sphinx moth. In contrast, species of Braconidae are common parasitoids on the larvae of the tobacco hornworm and the tomato hornworm in North America (Gilmore 1938). There are now at least 74 alien species, in 41 genera, of braconid wasps established in Hawaii, at least 35 species of which were purposefully introduced as biological control agents (Nishida 1992). Most species of alien Braconidae and Ichneumonidae wasps that are parasitic on Lepidoptera are not host specific, but attack the caterpillars or pupae of a variety of moths (Zimmerman 1945; 1978; Funasaki *et al.* 1988). These wasps have become the dominant larval parasitoids of Hawaii even in intact, high elevation, native forest areas (Zimmerman 1948; Howarth *et al.* 1994). Wasps eggs are laid in the eggs or caterpillars of Lepidoptera and upon hatching the larvae consume internal tissues of the larvae, eventually destroying the host. At least one species established in Hawaii, *Hyposeter exiguae*, is known to attack the tobacco hornworm and the tomato hornworm in North America (Carlson 1979). This species has been recorded from all the main islands except Lanai (Nishida 1992) and was recorded parasitizing the lawn armyworm (*Spodoptera maurita*) on *Nicotiana glauca* (tree tobacco) at Spreckelsville, Maui, an alternate host at an historical locality of Blackburn's sphinx moth (Swezey 1927).

The rarity of Blackburn's sphinx moth has precluded direct documentation of alien braconid and ichneumonid wasps as parasites, but given the abundance and host breadth of the wasps, they are considered significant threats to this species (Howarth 1983; Gagne and Howarth 1985; Howarth *et al.* 1994; F.G. Howarth, pers. comm., 1994).

Small wasps in the family Trichogrammatidae parasitize insect eggs, with numerous adults sometimes developing within a single host egg. The taxonomy of this group is confusing, and it is unclear if Hawaii has any native species (Nishida 1992; Jack Beardsley, University of Hawaii, pers. comm. 1994). Several alien species are established in Hawaii (Nishida 1992) including *Trichogramma minutum*, which is known to attack the sweet potato hornworm in Hawaii (Fullaway and Krauss 1945). In 1929, the wasp *Trichogramma chilonis* was introduced in Hawaii as a biological control agent for the Asiatic rice borer (*Chilo suppressalis*) (Funasaki *et al.* 1988). This wasp parasitizes the eggs of a variety of Lepidoptera in Hawaii, including sphinx moths (Funasaki *et al.* 1988). Williams (1947) found 70% of the eggs of Blackburn's sphinx moth to be parasitized by a *Trichogramma* wasp,

probably *T. chilonis.* Over 80% of the eggs of the alien grass webworm (*Herpetogramma licarsisalis*) in Hawaii are parasitized by these wasps (Davis 1969). In Guam, *Trichogramma chilonis* effectively limits populations of the sweetpotato hornworm (Nafus and Schreiner 1986), which is considered to be under complete biological control by this wasp in Hawaii (Lai 1988). While this wasp probably affects Blackburn's sphinx moth in a density dependent manner, the level of parasitism varying with the density of the host (Nafus 1993a), and is theoretically unlikely to directly cause extinction of a population or the species, the availability of more abundant, widespread alternate hosts (any other lepidopteran eggs) may allow for the extirpation of Blackburn's sphinx moth by this or other egg parasites as part of broader host base (Tothill *et al.* 1930; Howarth 1991; Nafus 1993b).

Hawaii has no native parasitic flies in the family Tachinidae (Nishida 1992). Two species of tachinid flies, *Lespesia archippivora* and *Chaetogaedia monticola,* were purposefully introduced to Hawaii for biological control of armyworms (Funasaki *et al.* 1988; Nishida 1992). These flies lay their eggs externally on caterpillars, and upon hatching, the larvae burrow into the host, attach to the inside surface of the cuticle, and consume the soft tissues (Etchegaray and Nishida 1975b). In North America, *Chaetogaedia monticola* is known to attack at least 36 species of Lepidoptera in eight families, including Sphinx moths. *Lespesia archippivora* is known to attack Sphinx moths in addition to over 60 other species of Lepidoptera in 13 families (Arnaud 1978). These species have been recorded to attack a variety of Lepidoptera in Hawaii and are believed to depress populations of at least two native species of moths (Lai 1988). Over 40% of the caterpillars of the monarch butterfly (*Danaus plexippus*) on Oahu are parasitized by *Lespesia archippivora* (Etchegaray and Nishida 1975a) and the introduction of a related species to Fiji resulted in the extinction of a native moth there (Tothill *et al.* 1930; Howarth 1991). Both these species occur on Maui and are direct threats to Blackburn's sphinx moth.

D. *The inadequacy of existing regulatory mechanisms.* The single known population of this moth occurs on State owned land. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State Government agencies. State regulations prohibit the removal, destruction, or damage of animals found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, ''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter.'' Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of this animal species will therefore reinforce and supplement the protection available under State law.

Alien predatory and parasitic insects are the primary cause of the reduction in range and abundance of Blackburn's sphinx moth, and are the most serious present threat to its continued existence. Some of these alien species have been purposefully introduced by the State of Hawaii's Department of Agriculture or other agricultural agencies (Funasaki *et al.* 1988) and importations and augmentations of lepidopteran parasitoids continues. Presently, there are no Federal statutes that specifically require biocontrol agents to be reviewed before they are introduced. The limited Federal review process is based on other related Federal statutes, primarily quarantine acts, registration acts, and protective acts for endangered species. These statutes have substantial limitations as tools for regulating biological control agents (Miller and Aplet 1993). Although the State of Hawaii requires that new introductions are reviewed before release (HRS Chapt. 150A), post-release biology and host range cannot be predicted from laboratory studies (Gonzalez and Gilstrap 1992; Roderick 1992) and the intentional release or augmentation of any lepidopteran predator or parasitoid is a potential threat to Blackburn's sphinx moth (Gagne and Howarth 1985; Simberloff 1992).

E. *Other natural or manmade factors affecting its continued existence.* Alien predators and parasitoids and the loss of its host plant have extirpated all populations of this moth at lower elevations and in more mesic areas. Thus, if the Kanaio population is severely reduced in size there is now no potential for recolonization or ''rescue'' (Brown and Kodric-Brown 1977) of the remaining population by immigrants (Arnold 1983). The single population of Blackburn's sphinx moth increases the potential for extinction from naturally occurring events. Isolated, random events such as hurricanes, landslides and fires could result in extinction of this species if the single population site is affected.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list Blackburn's sphinx moth (*Manduca blackburni*) as endangered. This species is threatened by habitat degradation through loss of its native host plant and by predation from ants and alien parasitoid wasps. The single extant (existing) population of this species makes it susceptible to extinction from naturally occurring events. This species is in danger of extinction throughout all of its range, and therefore the preferred action is to list the Blackburn's sphinx moth as endangered.

Critical habitat is not being proposed for this species, for reasons discussed in the ''Critical Habitat'' section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Blackburn's sphinx moth at this time. Service regulations (50 CFR

424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The listing of this species under the Act publicizes the rarity of this moth and, thus, can make it attractive to researchers and/or collectors of rare Lepidoptera. In light of the existence of dealers in rare and endangered Lepidopterans (USDJ *in litt.* 1993), **Federal Register** publication of maps with precise locations and descriptions of critical habitat, as required for the designation of critical habitat, would increase the degree of threat to this moth from take by collectors and could contribute to its decline.

All involved parties including the major landowners have been notified of the importance of protecting the habitat of the remaining population of this species. Protection of the habitat of the species will also be addressed through the Act's recovery process and section 7 consultation process. Part of the single remaining population of this moth is located on State lands utilized for military training of the Hawaii National Guard. The Department of Defense is aware of the species' occurrence on the site and is required to consult with the Service to ensure that any actions that it authorizes, funds or carries out do not jeopardize the continued existence of the species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from collecting and would provide no additional benefit to the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Part of the single remaining population of this moth is located on State land utilized for military training of the Hawaii National Guard. Federally supported activities that could affect Blackburn's sphinx moth and its habitat in the future include, but are not limited to, the following; release or augmentation of biological control agents, road and firebreak construction, troop movements, and fire resulting from the use of live ammunition. Conservation of this moth is consistent with most ongoing operations at the occupied site, and the proposed listing of the species is not expected to result in significant restrictions on military use of the land, or insect pest control in Hawaii.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that, based on the best available information, the following action will not result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, dead specimens of this taxon that were collected prior to the date of publication in the **Federal Register** of a final regulation adding this taxon to the list of endangered species.

Potential activities involving Blackburn's sphinx moth that the Service believes will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Collection of specimens of this taxon for private possession or deposition in an institutional collection;

(2) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(3) Unauthorized use of chemical insecticides that take Blackburn's sphinx moth in violation of label restrictions;

(4) The unauthorized release of biological control agents which attack any life stage of this taxon, and;

(5) The removal or destruction of the native host plant, defined as any species in the genus *Nothocestrum*, within areas occupied by this taxon.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsmile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning—

(1) Biological, commercial trade, or other relevant data concerning threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Ecoregion Manager (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Pacific Islands Office (see **ADDRESSES** above).

Author: The primary author of this document is Adam Asquith, Ecological Services, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–3441).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Moth, Blackburn's Sphinx.	*Manduca blackburni*	U.S.A. (HI)	NA	E	NA	NA	NA
*	*	*	*	*	*		*

Dated: February 12, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–8350 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AD09

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Rule To List Five Plants and a Lizard From Monterey County, California, as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant ot the Endangered Species Act of 1973, as amended (Act), gives notice that the comment period is reopened on the proposed rule to list *Astragalus tener* var. *titi* (coastal dunes milk-vetch), *Piperia yadonii* (Yadon's piperia), *Potentilla hickmanii* (Hickman's potentilla), *Trifolium trichocalyx* (Monterey clover) and the black legless lizard (*Anniella pulchra nigra*) as endangered; and *Cupressus goveniana* ssp. *goveniana* (Gowen cypress) as threatened. The comment period has been reopened to allow all interested parties to submit new information on the proposal and to provide opportunity for comment on the

new information on distribution and abundance of *Piperia yadonii* that was submitted at the end of the previous comment period.

DATES: The public comment period closes on May 2, 1997. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California, 93003. Comments and materials received will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Steeck of the Ventura Field Office (see **ADDRESSES** section) at (805)644–1766 or facsimile (805)644–3958).

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1995, the Service published a rule proposing endangered status for *Astragalus tener* var. *titi* (coastal dunes milk-vetch), *Piperia yadonii* (Yadon's piperia), *Potentilla hickmanii* (Hickman's potentilla), *Trifolium trichocalyx* (Monterey clover) and the black legless lizard (*Anniella pulchra nigra*); and threatened status for *Cupressus goveniana* ssp. *goveniana* (Gowen cypress).

These six taxa are currently found primarily along the coast of northern Monterey County, California. An extant population of *Potentilla hickmanii* is also known from San Mateo County. The five plant taxa and the lizard are threatened by one or more of the following: alteration, destruction, and fragmentation of habitat resulting from urban and golf course development; recreational activities; military activities; competition with non-native species; and alteration of natural fire cycles. Due to their small number of individuals, several taxa are also threatened with extinction due to random natural events or unforseen human activities.

The initial comment period closed on October 9, 1995. Although a public hearing was requested, a hearing could not be held during the initial comment period, due to a Federal moratorium on final listing actions (Pub. L. 104–6), which had taken effect on April 10, 1995 and stipulated that no funds could be used to make final listing or critical habitat determinations. Once the Federal moratorium was lifted, on April 26, 1996, and funding was restored, the Service scheduled the public hearing and reopened the comment period. The public hearing was held on August 20, 1996, and the comment period closed on August 30, 1996. At the public hearing, new information was presented on the distribution and abundance of *Piperia yadonii*. This information was included in a report received by the Service on August 30, 1996. The Service believes that the new information on the distribution and abundance of *Piperia yadonii* is significant and is providing the public an opportunity to comment on it. In addition to comments on *Piperia yadonii*, the Service requests any additional information on the species listed in the proposed rule, including:

(1) Biological, commercial, or other relevant data on any threats (or lack thereof) to any of the species, and;

(2) Additional information on the size, number or distribution of populations of any of the species.

Comments may be submitted through May 2, 1997 to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Diane Steeck (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 17, 1997.

Michael J. Spear,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 97–7448 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 63
Wednesday, April 2, 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

Submission for OMB Review; Comment Request

March 28, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Farm Real Estate Tax Survey.

OMB Control Number: 0536–0002.

Summary: Information is collected on farm and ranch real estate taxes plus assessed value of land and building.

Need and Use of the Information: Estimates of the farm real estate taxes are used for the computation of the index of Prices Paid by farmers. They are essential in computing net farm income, return on equity to farming and cost of farms production.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 2,500.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,083.

Rural Business-Cooperative Service

Title: Cooperative Services Questionnaire: Market Potential for New Cooperatives, Buyer Survey for New Cooperative Activity.

OMB Control Number: 0570–0009.

Summary: RBS will survey potential buyers of proposed cooperatives' products at the request of producer groups to assist them in determining the feasibility of new cooperative marketing ventures.

Need and Use of the Information: Data are used to develop a total business plan for new cooperative activities and to evaluate the potential for their success.

Description of Respondents: Business or other for-profit.

Number of Respondents: 105.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3.5

Rural Housing Service

Title: 7 CFR 1924–F, Complaints and Compensation for Construction Defects.

OMB Control Number: 0575–0082.

Summary: Information is collected from borrowers concerning defects of newly constructed dwelling and new manufactured housing units.

Need and Use of the Information: The information is used by the Rural Housing staff to evaluate the request and assist the borrower in identifying possible causes for the construction defects and corrective actions.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5,000.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 1,500.

Donald Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 97–8414 Filed 4–1–95; 8:45 am]

BILLING CODE 3410–01–M

Office of Small and Disadvantaged Business Utilization; Subcontracting Forum

AGENCY: U.S. Department of Agriculture (USDA) Office of Small and Disadvantaged Business Utilization.

ACTION: Notice of Meeting.

SUMMARY: The Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Agriculture (USDA) will hold its first Federal Subcontracting Forum on May 7, 1997, from 9 a.m. to 12 Noon. The meeting will be held in Room 107–A of the Jamie L. Whitten Federal Building, located at 1400 Independence Avenue, SW, Washington, DC 20250. Attendance at the meeting is open to all large business concerns.

Presentation topics include the Impact of the Adarand Decision and the Department of Justice's Proposal on the Federal Subcontracting Program; the Federal Subcontracting Program at USDA; and the Future of the Federal Subcontracting Program. Among the guest speakers will be Bob Taylor, Manager, Federal Subcontracting Program, Small Business Administration (SBA), and Linda Mesaros, Deputy Associate Administrator for Procurement Policy, Office of Federal Procurement Policy (OFPP).

Large business representatives should be prepared to address their subcontracting concerns/issues at the meeting. Legal counsel and a team of procurement officials from USDA, SBA and OFPP will be available to answer questions. Confidential and proprietary information will not be discussed. Seating at the forum is limited, and reservations are required. Reservations will be taken on a first-come, first-served basis.

DATES: Reservations must be made by April 23, 1997 (fax or e-mail only).

ADDRESSES: Confirm by facsimile at (202) 720–3001. Confirm by e-mail at giavanna.pullen@usda.gov.

FOR FURTHER INFORMATION CONTACT: Please contact Loretta D'Amico, USDA/

OSDBU, 1400 Independence Avenue, SW, AG STOP 9501, Washington, DC 20250–9501, telephone: (202) 720–7117, or visit the OSDBU Home Page on the Internet at www.usda.gov/da/smallbus.html.

Sharron L. Harris,

Director, Office of Small and Disadvantaged. Business Utilization

[FR Doc. 97–8276 Filed 4–1–97; 8:45 am]

BILLING CODE 3410–01–P

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Farm Service Agency (FSA) intends to request an extension for currently approved collection of information pertaining to foreign investment in United States (U.S.) agricultural land as authorized by the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).

DATE: Comments on this notice must be received on or before June 2, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Patricia A. Blevins, Agricultural Foreign Investment Specialist, Foreign Investment Disclosure Branch, Operations Analysis Staff, USDA, FSA, STOP 0531, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0531, (202) 720–0604.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Foreign Investment Disclosure Act Report.

OMB Number: 0560–0097.

Expiration Date: June 30, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: AFIDA requires foreign persons who hold, acquire, or dispose of any interest in U.S. agricultural land to report the transactions to the FSA on an AFIDA report. The information collected from the AFIDA reports is used in the preparation of an annual report to Congress and the President by the Economic Research Service concerning the effect of foreign investment upon family farms and rural communities. Congress reviews the annual report and decides if further regulatory action is required.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .4818 hours per response.

Respondents: Foreign investors, corporate employees, farm managers or attorneys.

Estimated Number of Respondents: 4,375.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,108 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Patricia A. Blevins, Agricultural Foreign Investment Specialist, Foreign Investment Disclosure Branch, Operations Analysis Staff, USDA, FSA, STOP 0531, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0531, (202) 720–0604.

Signed at Washington, DC, on March 26, 1997.

Bruce R. Weber,

Acting Administrator Farm Service Agency.

[FR Doc. 97–8412 Filed 4–1–97; 8:45 am]

BILLING CODE 3410–05 P

Forest Service

Nicore Mining Plan of Operation, Siskiyou National Forest, Josephine County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, in cooperation with the Bureau of Land Managment, will prepare an Environmental Impact Statement (EIS) to disclose the environmental impacts for a site-specific Proposed Action to approve a Plan of Operation for access and mining with mitigation, in the West Fork Illinois River drainage, of the Illinois Valley Ranger District, Siskiyou National Forest, Josephine County, Oregon. These are two access alternatives presently under consideration. The Agency gives notice of the full environmental analysis and decision-making process that will occur on the Proposed Action, so that interested and affected persons are aware of how they may participate and contribute to the analysis.

DATES: Issues with the Proposed Action must be received in writing before May 5, 1997.

ADDRESSES: Submit written issues with the Proposed Action to Mary Zuschlag, District Ranger, Illinois Valley Ranger District, 26568 Redwood Highway, Cave Junction, Oregon, 97523.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Proposed Action and EIS to Don McLennan, Interdisciplinary Team Leader, Illinois Valley Ranger District, 26568 Redwood Highway, Cave Junction, Oregon, 97523 or by calling (541) 592–2166.

SUPPLEMENTARY INFORMATION: The 1872 Mining Law, Section 1 states that all valuable mineral deposits in lands belonging to the United States are to be free and open to exploration.

The 1970 Mining and Minerals Policy Act declares that it is the policy of the Federal Government to foster and encourage private enterprise in the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries. The Act also declares that it is the policy of the Federal Government to foster and encourage private enterprise in the orderly and economic development of domestic mineral resources.

In preparing the EIS, the Agency will tier to the Amended Land and Resource Management Plan for the Siskiyou National Forest, consider submitted written issues with Proposed Action, and develop additional alternatives that respond to the significant issues with the Proposed Action. In addition, the agency will analyze a no-action alternative.

Public participation will be important at several times during the analysis. The first time is during the scoping period [Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act (CFR) at 40 CFR 150.7]. The Agency will be seeking written issues with the Proposed Action from Federal, State, and local agencies, any affected Indian tribes, the permit applicant, and other individuals who may be interested in or affected by the Proposed Action. This input will be

used to develop additional alternatives. The scoping process includes:

1. Contacting Federal, State, and local agencies, any affected Indian tribes, the permit applicant, and other individuals who may be interested in or affected by the Proposed Action.
2. Identifying potential issues.
3. Selecting significant issues with the Proposed Action, needing in-depth analysis.
4. Eliminating insignificant issues; issues that have been analyzed and documented in a previous EIS, issues that controvert the need for the Proposed Action, or issues that are outside the authority of the Responsible Official to decide.
5. Identifying resources that have a potential for being effected by the Proposed Action.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for review by July 1997. At that time, EPA will publish a Notice of Availability for the Draft EIS in the **Federal Register.**

A 45-day comment period for the Draft EIS will be from the date the EPA's Notice of Availability appears in the **Federal Register.** To assist the Agency, comments on the Draft EIS will need to be written, be as specific as possible, refer to specific pages and chapters of the Draft EIS, and address either the adequacy of the Draft EIS or the merits of the alternatives discussed in the Draft EIS (40 CFR 1503.3).

It is important to give Reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, Reviewers of a Draft EIS *must* structure their participation in the environmental review process of the Proposed Action so that it is specific, 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 early-on in the environmental review process, but that are not raised until after completion of the Final EIS, 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 45-day comment period so that substantive comments are available to the Agency at a time when the Agency can meaningfully consider and respond to them in the Final EIS.

After the 45-day comment period ends on the Draft EIS, comments will be considered and analyzed by the Agency in preparing the Final EIS. The Final EIS is scheduled to be completed by December 1997. In the Final EIS, the Agency is required to respond to the comments received (40 CFR 1503.4).

The Responsible Official will be Mike Lunn, Forest Supervisor, who will consider the Final EIS, applicable laws, regulations, policies, and analysis files in making decision regarding this Proposed Action. The Responsible Official will document the decision and rationale in the Record of decision. That decision will be subject to appeal by the general public under 36 CFR 215 and by the miner under 36 CFR 251.

Dated: March 25, 1997.

Liz Agpaoa,

Acting Forest Supervisor.

[FR Doc. 97–8339 Filed 4–1–97; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Releases, Assassination Records Designation, and Corrections

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on March 13–14, 1997, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (Supp. V 1994) (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On March 13–14, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations:

For each document, the number of releases of previously redacted information immediately follows the record identification number, followed in turn by the number of postponements sustained, and, where appropriate, the date the document is scheduled to be released or re-reviewed.

FBI Documents: Open in Full

124–10085–10307; 1; 0; n/a
124–10085–10324; 1; 0; n/a
124–10145–10250; 7; 0; n/a
124–10145–10301; 11; 0; n/a
124–10146–10204; 25; 0; n/a
124–10151–10144; 1; 0; n/a
124–10180–10186; 3; 0; n/a
124–10188–10072; 3; 0; n/a

HSCA Documents: Open in Full

180–10142–10269; 10; 0; n/a

FBI Documents: Postponed in Part

124–10062–10331; 1; 3; 10/2017
124–10062–10456; 0; 6; 03/2007
124–10062–10457; 0; 5; 10/2017
124–10063–10129; 2; 2; 03/2007
124–10066–10062; 1; 1; 10/2017
124–10066–10482; 0; 1; 10/2017
124–10067–10272; 2; 1; 10/2017
124–10071–10230; 0; 1; 10/2017
124–10072–10413; 0; 2; 10/2017
124–10073–10429; 1; 1; 03/2007
124–10089–10093; 5; 1; 10/2017
124–10106–10246; 0; 1; 10/2017
124–10120–10017; 2; 1; 10/2017
124–10121–10027; 5; 1; 10/2017
124–10137–10129; 5; 1; 10/2017
124–10138–10008; 6; 2; 03/2007
124–10140–10129; 5; 1; 10/2017
124–10147–10155; 5; 1; 10/2017
124–10149–10066; 5; 1; 10/2017
124–10150–10104; 1; 1; 10/2017
124–10156–10014; 2; 1; 10/2017
124–10160–10031; 1; 1; 10/2017
124–10164–10151; 0; 2; 10/2017
124–10172–10020; 5; 5; 10/2017
124–10173–10486; 9; 2; 03/2007
124–10173–10487; 5; 2; 03/2007
124–10173–10490; 9; 2; 03/2007
124–10179–10045; 0; 1; 10/2017
124–10179–10056; 1; 4; 03/2007
124–10179–10133; 5; 1; 03/2007
124–10179–10358; 11; 2; 10/2017
124–10181–10348; 5; 3; 03/2007
124–10181–10350; 7; 8; 03/2007
124–10184–10018; 12; 2; 03/2007
124–10184–10233; 1; 1; 10/2017
124–10184–10258; 17; 6; 10/2017
124–10184–10292; 4; 2; 03/2007
124–10184–10305; 40; 26; 03/2007
124–10184–10319; 3; 3; 03/2007
124–10184–10320; 3; 3; 03/2007
124–10231–10064; 5; 5; 10/2017
124–10232–10022; 0; 5; 10/2017
124–10237–10009; 1; 1; 10/2017
124–10190–10080; 1; 2; 10/2017
124–10235–10155; 3; 1; 10/2017
124–10237–10172; 1; 6; 03/2007
124–10237–10175; 0; 5; 03/2007
124–10237–10177; 0; 6; 03/2007
124–10244–10157; 7; 1; 03/2007

124–10245–10126; 6; 4; 03/2007
124–10247–10392; 9; 2; 03/2007
124–10247–10393; 0; 12; 03/2007
124–10248–10288; 0; 4; 03/2007
124–10249–10327; 8; 2; 03/2007
124–10258–10186; 4; 2; 03/2007
124–10266–10034; 10; 2; 03/2007
124–10267–10477; 12; 8; 03/2007
124–10267–10490; 17; 5; 10/2017

CIA Documents: Postponed in Part

104–10052–10135; 0; 23; 05/1997
104–10059–10049; 1; 2; 03/2007
104–10061–10121; 94; 63; 05/1997
104–10061–10163; 3; 3; 05/1997
104–10063–10008; 2; 2; 05/1997
104–10063–10334; 11; 7; 03/2007
104–10063–10343; 7; 3; 03/2007
104–10065–10128; 7; 8; 03/2007
104–10066–10108; 6; 8; 03/2007
104–10066–10149; 7; 19; 03/2007
104–10067–10091; 1; 1; 05/1997
104–10067–10224; 0; 4; 12/2006
104–10067–10426; 39; 6; 03/2007
104–10068–10120; 8; 7; 03/2007
104–10068–10144; 37; 15; 05/1997
104–10068–10147; 2; 15; 03/2007

USSS Documents: Postponed in Part

154–10002–10330; 3; 2; 10/2017

HSCA Documents: Postponed in Part

180–10001–10166; 0; 1; 10/2017
180–10092–10304; 0; 1; 10/2017
180–10106–10006; 0; 1; 10/2017
180–10109–10350; 0; 6; 10/2017
180–10110–10145; 0; 2; 05/1997
180–10131–10000; 0; 1; 10/2017
180–10140–10072; 7; 16; 05/1997
180–10140–10073; 7; 15; 05/1997
180–10140–10130; 4; 2; 03/2007
180–10140–10152; 2; 2; 05/1997
180–10140–10170; 4; 2; 03/2007
180–10140–10187; 40; 5; 03/2007
180–10140–10308; 5; 1; 03/2007
180–10140–10309; 5; 1; 03/2007
180–10140–10310; 1; 1; 03/2007
180–10140–10311; 1; 1; 03/2007
180–10140–10312; 5; 1; 03/2007
180–10140–10313; 1; 1; 03/2007
180–10140–10314; 5; 1; 03/2007
180–10140–10345; 15; 7; 05/1997
180–10140–10363; 2; 4; 05/1997
180–10141–10161; 2; 3; 03/2007
180–10141–10173; 3; 1; 05/1997
180–10141–10194; 22; 25; 05/2001
180–10141–10196; 9; 12; 10/2017
180–10141–10200; 68; 3; 03/2007
180–10141–10201; 63; 3; 03/2007
180–10141–10202; 92; 3; 03/2007
180–10141–10211; 18; 6; 05/1997
180–10141–10220; 8; 12; 05/1997
180–10141–10222; 19; 2; 05/2001
180–10141–10233; 13; 5; 05/1997
180–10141–10234; 24; 24; 05/1997
180–10141–10235; 0; 4; 05/1997
180–10141–10240; 12; 9; 03/2007
180–10141–10245; 16; 6; 05/1997
180–10141–10258; 4; 1; 03/2007
180–10141–10259; 4; 1; 03/2007
180–10141–10263; 6; 1; 03/2007
180–10141–10272; 12; 1; 10/2017
180–10141–10279; 38; 1; 05/1997
180–10141–10281; 0; 3; 03/2007
180–10141–10282; 0; 2; 05/2001
180–10141–10317; 0; 1; 10/2017
180–10141–10444; 31; 6; 10/2017
180–10141–10451; 8; 4; 05/1997
180–10141–10497; 0; 3; 10/2017
180–10141–10499; 20; 2; 10/2017
180–10142–10000; 8; 2; 10/2017
180–10142–10015; 69; 4; 05/1997
180–10142–10018; 55; 4; 05/1997
180–10142–10025; 60; 4; 05/1997
180–10142–10038; 63; 4; 05/1997
180–10142–10060; 31; 2; 10/2017
180–10142–10062; 18; 1; 10/2017
180–10142–10069; 11; 11; 05/1997
180–10142–10077; 0; 2; 05/1997
180–10142–10084; 16; 8; 05/1997
180–10142–10093; 5; 5; 05/2001
180–10142–10103; 11; 4; 05/1997
180–10142–10110; 11; 13; 05/2001
180–10142–10111; 12; 6; 05/1997
180–10142–10115; 8; 2; 03/2007
180–10142–10116; 74; 13; 05/1997
180–10142–10154; 2; 13; 03/2007
180–10142–10180; 0; 2; 05/1997
180–10142–10182; 0; 3; 05/1997
180–10142–10183; 0; 1; 05/1997
180–10142–10184; 0; 1; 05/1997
180–10142–10185; 0; 25; 05/1997
180–10142–10195; 6; 9; 03/2007
180–10142–10196; 25; 8; 03/2007
180–10142–10207; 0; 9; 05/1997
180–10142–10209; 0; 1; 05/1997
180–10142–10211; 0; 2; 05/1997
180–10142–10221; 12; 2; 05/1997
180–10142–10223; 11; 2; 05/1997
180–10142–10224; 16; 2; 05/1997
180–10142–10228; 7; 2; 10/2017
180–10142–10229; 6; 1; 10/2017
180–10142–10238; 5; 2; 10/2017
180–10142–10240; 1; 2; 10/2017
180–10142–10241; 3; 4; 10/2017
180–10142–10242; 6; 2; 05/1997
180–10142–10251; 19; 9; 03/2007
180–10142–10253; 14; 4; 05/1997
180–10142–10260; 0; 2; 10/2017
180–10142–10270; 20; 3; 03/2007
180–10142–10279; 7; 1; 03/2007
180–10142–10280; 1; 1; 03/2007
180–10142–10281; 2; 1; 03/2007
180–10142–10283; 29; 4; 03/2007
180–10142–10284; 1; 2; 03/2007
180–10142–10294; 10; 1; 03/2007
180–10142–10300; 5; 1; 05/1997
180–10142–10301; 17; 6; 05/2001
180–10142–10333; 1; 2; 03/2007
180–10142–10351; 7; 7; 03/2007
180–10142–10353; 18; 10; 05/1997
180–10142–10386; 1; 2; 10/2017
180–10142–10496; 5; 6; 03/2007
180–10142–10498; 1; 13; 05/2001
180–10143–10024; 0; 5; 05/1997
180–10143–10025; 0; 6; 05/1997
180–10143–10027; 0; 4; 05/1997
180–10143–10029; 0; 1; 05/1997
180–10143–10030; 0; 2; 05/1997
180–10143–10032; 0; 2; 05/1997
180–10143–10036; 0; 5; 05/1997
180–10143–10055; 0; 3; 05/1997
180–10143–10062; 0; 2; 10/2017
180–10143–10064; 0; 2; 05/1997
180–10143–10071; 17; 14; 05/1997
180–10143–10073; 10; 1; 05/1997
180–10143–10080; 5; 4; 03/2007
180–10143–10082; 20; 33; 05/1997
180–10143–10083; 5; 21; 05/1997
180–10143–10088; 22; 4; 03/2007
180–10143–10089; 8; 6; 05/1997
180–10143–10090; 68; 25; 05/1997
180–10143–10091; 22; 16; 05/1997
180–10143–10092; 6; 2; 03/2007
180–10143–10096; 17; 2; 10/2017
180–10143–10098; 1; 3; 05/1997
180–10143–10099; 13; 19; 05/1997
180–10143–10100; 4; 3; 05/1997
180–10143–10102; 10; 3; 05/1997
180–10143–10103; 40; 19; 05/1997
180–10143–10104; 3; 2; 05/1997
180–10143–10105; 1; 15; 05/1997

NSA Documents: Postponed in Part:

144–10001–10058; 9; 9; 10/2017

CIA Documents: Postponed in Full (NBR)

104–10063–10024; 0; 1; 10/2017
104–10063–10043; 0; 1; 10/2017
104–10063–10048; 0;1; 10/2017
104–10063–10069; 0; 1; 10/2017
104–10063–10073; 0; 1; 10/2017
104–10063–10142; 0; 1; 10/2017
104–10063–10143; 0; 1; 10/2017
104–10063–10155; 0; 1; 10/2017
104–10063–10159; 0; 1; 10/2017
104–10063–10191; 0; 1; 10/2017
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104–10063–10193; 0; 1; 10/2017
104–10063–10194; 0; 1; 10/2017
104–10063–10196; 0; 1; 10/2017
104–10063–10199; 0; 1; 10/2017
104–10063–10200; 0; 1; 10/2017
104–10063–10202; 0; 1; 10/2017
104–10063–10203; 0; 1; 10/2017
104–10063–10204; 0; 1; 10/2017
104–10063–10220; 0; 1; 10/2017
104–10063–10223; 0; 1; 10/2017
104–10063–10355; 0; 1; 10/2017
104–10063–10357; 0; 1; 10/2017
104–10063–10375; 0; 1; 10/2017
104–10063–10376; 0; 1; 10/2017
104–10063–10377; 0; 1; 10/2017
104–10063–10378; 0; 1; 10/2017
104–10063–10379; 0; 1; 10/2017
104–10063–10386; 0; 1; 10/2017

Notice of Additional Releases:

After consultation with appropriate Federal agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full: 124–10002–10168; 124–10002–10387; 124–10005–10020; 124–10005–10499; 124–10006–10010; 124–10006–10469; 124–10011–10494; 124–10022–10008; 124–10023–10247; 124–10023–10251; 124–10023–10255; 124–10023–10259; 124–10023–10261; 124–10023–10265; 124–10023–10296; 124–10023–10314; 124–10024–10272; 124–10024–10310; 124–10025–10268; 124–10027–10141; 124–10029–10266; 124–10029–10364; 124–10029–10371; 124–10029–10375; 124–10035–10154; 124–10035–10243; 124–10035–10370; 124–10035–10374; 124–10035–10393; 124–10053–10362; 124–10055–10005; 124–10058–10421; 124–10058–10422; 124–10060–10169; 124–10061–10006; 124–10062–10403; 124–10062–10480; 124–10062–10481; 124–10069–10170; 124–10071–10171; 124–10072–10025; 124–10073–10312; 124–10073–10431; 124–10073–10433; 124–10078–10476; 124–10079–10231; 124–10079–10362; 124–10080–10071; 124–10087–10017;

124–10087–10019; 124–10087–10022; 124–10089–10049; 124–10089–10195; 124–10091–10013; 124–10106–10082; 124–10115–10063; 124–10129–10295; 124–10133–10085; 124–10133–10088; 124–10140–10207; 124–10144–10051; 124–10144–10088; 124–10144–10089; 124–10148–10043; 124–10150–10382; 124–10151–10111; 124–10151–10276; 124–10152–10025; 124–10152–10038; 124–10152–10045; 124–10155–10277; 124–10156–10299; 124–10158–10019; 124–10158–10062; 124–10160–10025; 124–10162–10026; 124–10162–10028; 124–10162–10029; 124–10162–10031; 124–10162–10421; 124–10163–10126; 124–10163–10131; 124–10163–10132; 124–10163–10136; 124–10163–10137; 124–10163–10138; 124–10163–10371; 124–10167–10179; 124–10169–10062; 124–10170–10015; 124–10173–10369; 124–10174–10084; 124–10174–10177; 124–10175–10003; 124–10175–10086; 124–10175–10186; 124–10180–10291; 124–10181–10006; 124–10181–10036; 124–10181–10039; 124–10181–10354; 124–10182–10160; 124–10182–10443; 124–10182–10444; 124–10183–10288; 124–10184–10283; 124–10184–10289; 124–10184–10291; 124–10187–10203; 124–10187–10204; 124–10191–10116; 124–10230–10439; 124–10230–10453; 124–10230–10489; 124–10232–10146; 124–10233–10410; 124–10233–10439; 124–10236–10187; 124–10238–10276; 124–10239–10202; 124–10239–10214; 124–10240–10495; 124–10241–10411; 124–10244–10339; 124–10244–10495; 124–10245–10002; 124–10245–10462; 124–10247–10391; 124–10247–10412; 124–10248–10337; 124–10250–10106; 124–10250–10147; 124–10250–10149; 124–10250–10154; 124–10250–10155; 124–10252–10066; 124–10252–10102; 124–10254–10246; 124–10255–10074; 124–10256–10332; 124–10257–10066; 124–10258–10025; 124–10258–10152; 124–10258–10158; 124–10262–10031; 124–10262–10071; 124–10263–10362; 124–10263–10382; 124–10265–10337; 124–10269–10310; 124–10271–10086; 124–10272–10095; 124–10273–10372; 124–10273–10376; 124–10274–10285; 124–10274–10319; 124–10274–10322

After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassination records are now being opened in full: 180–10001–10026; 180–10001–10162; 180–10001–10163; 180–10001–10164; 180–10001–10165; 180–10070–10421; 180–10070–10423; 180–10070–10424; 180–10070–10425; 180–10070–10469; 180–10070–10487; 180–10073–10044; 180–10074–10434; 180–10075–10032; 180–10075–10033; 180–10075–10374; 180–10075–10434; 180–10075–10435; 180–10075–10436; 180–10075–10437; 180–10076–10311; 180–10076–10312; 180–10076–10413; 180–10076–10414; 180–10077–10033; 180–10080–10182; 180–10082–10064; 180–10083–10130; 180–10085–10090; 180–10085–10215; 180–10085–10227; 180–10085–10257; 180–10085–10267; 180–10085–10268; 180–10085–10294; 180–10086–10250; 180–10088–10058; 180–10088–10067; 180–10088–10103; 180–10088–10133; 180–10089–10374; 180–10090–10175; 180–10090–10199; 180–10090–10221; 180–10090–10287; 180–10090–10288; 180–10090–10336; 180–10090–10366; 180–10092–10016; 180–10092–10074; 180–10092–10119; 180–10092–10120; 180–10092–10127; 180–10092–10149; 180–10092–10271; 180–10092–10272; 180–10096–10287; 180–10096–10407; 180–10096–10411; 180–10096–10413; 180–10096–10463; 180–10097–10491; 180–10097–10495; 180–10099–10445; 180–10099–10452; 180–10100–10256; 180–10101–10354; 180–10101–10355; 180–10101–10366; 180–10101–10367; 180–10101–10368; 180–10102–10050; 180–10103–10432; 180–10103–10433; 180–10103–10434; 180–10103–10435; 180–10103–10436; 180–10103–10437; 180–10103–10438; 180–10103–10439; 180–10103–10440; 180–10103–10441; 180–10103–10442; 180–10103–10443; 180–10103–10444; 180–10103–10445; 180–10103–10446; 180–10103–10447; 180–10103–10448; 180–10103–10449; 180–10103–10450; 180–10103–10451; 180–10103–10452; 180–10103–10453; 180–10103–10454; 180–10103–10455; 180–10103–10470; 180–10103–10490; 180–10103–10491;180–10104–10286; 180–10104–10287; 180–10104–10288; 180–10105–10159; 180–10105–10281; 180–10105–10282; 180–10105–10283; 180–10105–10288; 180–10105–10295; 180–10105–10296; 180–10105–10298; 180–10105–10299; 180–10105–10303; 180–10105–10310; 180–10105–10312; 180–10105–10416; 180–10106–10224; 180–10107–10498; 180–10108–10148; 180–10108–10149; 180–10108–10268; 180–10108–10348; 180–10109–10467; 180–10109–10472; 180–10112–10053; 180–10112–10067; 180–10112–10453; 180–10112–10469; 180–10112–10474; 180–10115–10015; 180–10115–10024; 180–10115–10025; 180–10117–10017; 180–10117–10018; 180–10117–10068; 180–10119–10196; 180–10119–10242

After consultation with appropriate Federal agencies, the Review Board announces that the following Ford Library records are now being opened in full: 178–10002–10034; 178–10002–10204; 178–10002–10263; 178–10002–10315; 178–10002–10381; 178–10002–10392; 178–10002–10392; 178–10002–10479; 178–10003–10159; 178–10003–10161; 178–10003–10171; 178–10003–10281; 178–10003–10282; 178–10003–10283; 178–10003–10284; 178–10003–10287; 178–10003–10290; 178–10003–10291; 178–10003–10292; 178–10003–10293; 178–10003–10324; 178–10003–10364; 178–10003–10381; 178–10003–10382; 178–10003–10383; 178–10003–10422; 178–10003–10425; 178–10003–10428; 178–10003–10463; 178–10003–10467; 178–10003–10472; 178–10004–10001; 178–10004–10004; 178–10004–10007; 178–10004–10010; 178–10004–10012; 178–10004–10015; 178–10004–10018; 178–10004–10031; 178–10004–10033; 178–10004–10058; 178–10004–10062; 178–10004–10063; 178–10004–10064; 178–10004–10065; 178–10004–10066; 178–10004–10067; 178–10004–10078; 178–10004–10084; 178–10004–10126; 178–10004–10186; 178–10004–10208; 178–10004–10209; 178–10004–10236; 178–10004–10236; 178–10004–10287

Notice of Assassination Records Designation

Designation: On March 13–14, 1997, the Assassination Records Review Board designated the following United States Secret Service materials assassination records: Documents from the Protective Research Section files on Abraham Bolden (12 pages), and Pedro Diaz Lanz (49 pages); testimony of USSS Chief James J. Rowley and Assistant Director Thomas J. Kelley before the National Commission on the Causes and Prevention of Violence (132 pages); correspondence between the USSS and the Senate Select Committee on Intelligence and the House Select Committee on Assassinations; a file from the USSS New York Field Office (202 pages); documents from the Office of Investigation (31 pages); a classified document logbook, 1961–1965 (12 pages); documents from the personnel files of USSS Agents. The Review Board examined other documents from Protective Research Section files, which it found not to be relevant to understanding the assassination of President Kennedy.

Notice of Correction:

In the December 6, 1996 **Federal Register** (FR Doc. 96–31046, 61 FR 64662), three NSA documents were inadvertently published as ''Additional Releases in Full.'' These documents will be addressed by the Review Board at a future meeting. They are: 144–10001–10053, 144–10001–10057, 144–10001–10155.

On September 27, 1996, the Review Board made formal determinations that were published in the October 18, 1996 **Federal Register** (FR Doc. 96–26742, 61 FR 54411). For that notice make the following corrections:

Record number	Previously published	Correct data
104–10054–10366	6; 29; 12/1996	5; 30; 5/1997
104–10059–10206	9; 11; 12/1996	22; 28; 05/1997
180–10072–10353	0; 2; 05/1997	0; 3; 05/1997

On October 16, 1996, the Review Board made formal determinations that were published in the November 5, 1996 **Federal Register** (FR Doc. 96–28333, 61 FR 56937). For that notice make the following corrections:

Record number	Previously published	Correct data
104–10059–10045	12; 9; 10/2006	22; 18; 10/2006
180–10065–10373	0; 5; 05/1997	0; 9; 05/1997

On November 14, 1996, the Review Board made formal determinations that were published in the December 6, 1996 **Federal Register** (FR Doc. 96–31046, 61 FR 64662).

For that notice make the following corrections:

Record number	Previously published	Correct data
180–10075–10354	0; 7; 12/1996	0; 8; 05/1997

On December 16–17, 1996, the Review Board made formal determinations that were published in the January 9, 1997 **Federal Register** (FR Doc. 97–492, 62 FR 1311). For that notice make the following corrections:

Record number	Previously published	Correct data
104–10052–10275	74; 4; 05/1997	73; 5; 12/2006

Dated: March 28, 1997.

David G. Marwell,

Executive Director.

[FR Doc. 97–8408 Filed 4–1–97; 8:45 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: The U.S. Geostationary Operational Environmental Satellite (GOES) Data Collection System.

Agency Form Number: Not Applicable.

OMB Approval Number: 0648–0157.

Type of Request: Extension of a currently approved collection.

Burden: 27 hours.

Avg. Hours Per Response: 3 hours.

Number of Respondents: 9.

Needs and Uses: NOAA's GOES Data Collection System collects and transmits environmental data from remote platforms. NOAA allows other users access to any excess capacity on the system if they meet certain criteria, which primarily are that they are sponsored by a government agency needing the data, and that another carrier service is not adequate. NOAA needs information to determine if applicants meet these criteria.

Affected Public: Not-for-profit institutions, individuals, businesses or other for-profit organizations, state, local or tribal government.

Frequency: One-time per applicant.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Adele Morris, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 27, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–8376 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–12–P

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the Paperwork Reduction Act's emergency processing procedures.

Agency: Technology Administration.

Title: National Medal of Technology Nomination Applications.

Agency Form Number: None.

OMB Approval Number: 0692–0001.

Type of Request: Reinstatement of a previously approved collection—Emergency Review Requested.

Burden: 375 hours.

Avg. Hrs. Per Response: 3 hours.

Number of Respondents: 125.

Needs and Uses: The National Medal of Technology is the highest honor awarded by the President of the United States to America's leading innovators. This Award is bestowed upon individuals, teams, or companies for accomplishment in the innovation, development, and commercialization of technology as evidenced by the establishment of new or significantly improved products, processes, or services. The program strives to highlight the national importance of fostering technological innovation based upon solid science, resulting in commercially successful products and services. The information collected through the application process is used by the Technology Nomination Evaluation Committee for selecting nominees to be recommended by the Secretary of Commerce to the President for this Award.

Affected Public: Individuals, businesses or other for-profit organizations, non-for-profit institutions, and the federal government.

Frequency: Applications are accepted on an annual basis.

Respondent's Obligation: Respondents voluntarily submit an application in order to be considered for the Award.

OMB Desk Officer: Maya A. Bernstein (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, D.C. 20503. She can be reached at (202) 395–3785. An emergency clearance has been requested by April 3, 1997.

Dated: March 27, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–8377 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–18–P

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Report of Sample Shipments of Chemical Weapon Precursors.

Agency Form Number: Not Applicable.

OMB Approval Number: 0694–0086.

Type of Request: Extension of a currently approved collection.

Burden: 125 hours.

Avg. Hours Per Response: Approximately 30 minutes for reporting requirements and 5 minutes for recordkeeping requirements.

Number of Respondents: Approximately 50 respondents and recordkeepers.

Needs and Uses: This collection is used to monitor sample shipments of chemical weapon precursors in order to facilitate and enforce provisions of the Export Administration Regulations that permit limited exports of sample shipments without a validated export license. The reports are reviewed to monitor quantities and patterns of shipments that might indicate circumvention of the regulations by entities seeking to acquire chemicals for chemical weapon purposes.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly and recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 27, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–8378 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DT–P

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Notification of Delivery Verification Requirement.

Agency Form Number: BXA 648P.

OMB Approval Number: 0694–0008.

Type of Request: Extension of a currently approved collection.

Burden: 1 hour.

Avg. Hours Per Response: 30 minutes.

Number of Respondents: 2.

Needs and Uses: In order to increase the effectiveness of export controls on international trade in strategic commodities, certain countries participate in the Import Certificate/Delivery Verification (IC/DV) procedure. Under this procedure, U.S. exporters may be notified that they must obtain from their foreign consignee an ''Import Certificate.'' This Certificate, which is issued by the foreign government, certifies that the commodities exported were actually delivered to the foreign consignee. When this Certification has been received, the U.S. exporters must complete the BXA form and return it and the Import Certificate to BXA. This Certificate can be used as an enforcement tool.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: March 27, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–8379 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of April 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Proceedings:	
Canada: Sugar and Syrups, A–122–085	4/1/96–3/31/97
France: Sorbitol, A–427–001	4/1/96–3/31/97
Greece: Electrolytic Manganese Dioxide, A–484–801	4/1/96–3/31/97
Japan:	
Calcium Hypochlorite, A–588–401	4/1/96–3/31/97
ElectroLytic Manganese Dioxide, A–588–806	4/1/96–3/31/97
Lenses, A–588–819	4/1/96–3/31/97
Microdisks, A–588–802	4/1/96–3/31/97
Roller Chain, A–588–028	4/1/96–3/31/97
Kazakhstan: Ferrosilicon, A–823–804	4/1/96–3/31/97
Kenya: Standard Carnations, A–779–602	4/1/96–3/31/97
Mexico: Fresh Cut Flowers, A–201–601	4/1/96–3/31/97
Norway: Fresh and Chilled Atlantic Salmon A–403–801	4/1/96–3/31/97
South Korea: Color Television Receivers, A–580–008	4/1/96–3/31/97
Taiwan: Color Television Receivers, Other Than Video Monitors, A–583–009	4/1/96–3/31/97
The Ukraine: Ferrosilicon, A–823–804	4/1/96–3/31/97
Countervailing Proceedings:	
Argentina: Wool, C–357–002	1/1/96–12/31/96
Brazil: Pig Iron, C–351–062	1/1/96–12/31/96
Norway: Fresh and Chilled Atlantic Salmon, C–403–802	1/1/96–12/31/96
Peru: Pompon Chrysanthemums, C–333–601	1/1/96–12/31/96

In accordance with §§ 353.22(a) and 355.22(a) of the regulations, an interested party as defined by § 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 CFR 355.22(a) of the regulations, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 353.31(g) or § 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of April 1997. If the Department does not receive, by the last day of April 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 27, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Group III.

[FR Doc. 97–8395 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–846]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Brake Rotors From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Michelle A. Frederick, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–0186, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act.

Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of brake rotors from the People's Republic of China (the PRC) to reflect the correction of ministerial errors made in the margin calculations in that determination. We are publishing this amendment to the final determination in accordance with 19 CFR 353.28(c).

Case History and Amendment of the Brake Rotors Final Determination

On February 24, 1997, the Department of Commerce (the Department) issued final determinations, pursuant to section 735 of the Act, that brake drums and brake rotors from the PRC are being, or are likely to be sold in the United States at less than fair value. See Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160 (February 28, 1997). On March 10, 13 and 14, 1997, certain respondents [1] and the petitioner submitted allegations that ministerial errors were made in the Department's brake rotors final determination. Neither the respondents nor the petitioner alleged the existence of ministerial errors in the Department's final determination in the companion brake drums case.

A ''ministerial error'' is defined under 19 CFR 353.28 as:

''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.'' 19 CFR 353.28(d).

The Department's regulations provide that the Department will correct any ministerial error by amending the final determination. Below, we discuss only those ministerial error allegations with which we agree, and which resulted in a change to a respondent's antidumping margin. Only Southwest made such an allegation. For a further discussion of these and all other ministerial error allegation made in this case, see March 25, 1997, Memorandum to Richard W. Moreland, Acting Deputy Assistant Secretary, Import Administration.

Southwest

Southwest alleged that the Department erred in its valuation and/or calculations of scrap value, rustproofing oil, and freight cost for coke.

We agree and have therefore made the necessary corrections in the margin program for these errors.

Conclusion

As described above, after reviewing the interested parties' allegations of clerical errors, we have amended the calculation of the antidumping margin for Southwest. Because of the change to the Southwest rate, we have also revised the margin for those respondents whose responses were not examined in this investigation.

Suspension of Liquidation

In accordance with section 735(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of brake rotors from the PRC exported by companies listed below, that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996, the date on which the Department published its preliminary determination. On or after the date of publication of this notice in the **Federal Register**, the Customs Service will require a cash deposit or posting of a bond equal to the estimated dumping margins by which the normal value exceeds the U.S. price, as shown below. These suspension of liquidation instructions will remain in effect until further notice. Suspension of liquidation instructions for firms not listed below remain as described in our original notice of final determination. 62 FR 9160 (February 28, 1997).

The amended weighted-average dumping margins for the brake rotors respondents are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Southwest	16.07
Respondents Not Selected:	
Hebei Metals and Minerals Import & Export Corporation	8.51
Jilin Provincial Machinery & Equipment Import & Export Corporation	8.51
Shandong Jiuyang Enterprise Corporation	8.51
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation	8.51
Qingdao Metals, Minerals & Machinery Import & Export Corporation	8.51
Shanxi Machinery and Equipment Import & Export Corporation	8.51
Xianghe Zichen Casting Corporation	8.51
Yenhere Corporation	8.51

[1] These respondents are China National Automotive Industry & Export Corporation and Laizhou CAPCO Machinery Co., Ltd. (collectively CAIEC/Laizhou CAPCO); Shenyang Honbase Machinery Co., Ltd. and Lai Zhou Luyuan Automobile Fittings Co., Ltd. (collectively Shenyang/Lai Zhou); and Southwest Technical Import & Export Corporation (Southwest).

This amended final determination is published pursuant to section 735(e) of the Act.

Dated: March 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–8390 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–848]

Notice of Postponement of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor, Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0666, (202) 482–4052, or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA).

Postponement of Final Determination

We have determined to extend the final determination based on a request by respondents that, should the preliminary determination be affirmative, the Department extend the due date for the final determination by 45 days. The respondents requesting the extension account for a significant proportion of exports of the subject merchandise, and the preliminary determination was affirmative. Therefore, in accordance with section 735(a)(2)(A) of the Act we are extending the final determination.

The deadline for issuing the final determination in this case is now no later than July 24, 1997.

This notice is published pursuant to section 735(a)(2) of the Act.

Dated: March 27, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 97–8389 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DS–P

Department of Agriculture; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC.

Docket Number: 96–139. Applicant: U.S. Department of Agriculture, Phoenix, AZ 85040–8832. Instrument: Mass Spectrometer, Model Isochrom. Manufacturer: Micromass, Inc., United Kingdom. Intended Use: See notice at 62 FR 5619, February 6, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides:

(1) A sensitivity of one mass 44 ion per 1100 molecules CO_2 and

(2) A precision of 0.3 per mil for samples ranging from 50 to 150 μg C. The National Institutes of Health advises in its memorandum dated February 4, 1997 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–8391 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 97–021. Applicant: Duke University, 103 Old Chemistry Building, Durham, NC 27708. Instrument: ICP Mass Spectrometer, Model PlasmaQuad 3. Manufacturer: VG Elemental, United Kingdom. Intended Use: The article is intended to be used for studies of geologic samples including rocks, sediments and natural waters to determine their chemical compositions, particularly their trace element composition. In addition, the instrument will be used for educational purposes in the course Geo 273S: Analytical Techniques. Other education objectives of the instrument are use by graduate students to obtain geochemical data as part of the Masters and Doctoral theses and by undergraduates to obtain data for their Independent Study projects and honors theses. Application accepted by Commissioner of Customs: March 7, 1997.

Docket Number: 97–922. Applicant: Rutgers University, PO Box 6999, Piscataway, NJ 08855. Instrument: 20/20 SI Mass Spectrometer. Manufacturer: Europa Scientific, United Kingdom. Intended Use: The instrument will be used for studies of plants, animals and other organic materials along with inorganic materials which contain carbon, nitrogen, oxygen, sulfur or hydrogen/deuterium. The objective of the investigations will be to use the stable isotopes that are contained in inorganic matter to reveal the role of organisms in the food chains. In addition, the instrument will be used for educational purposes in the course Environmental Applications of Stable Isotope Mass Spectroscopy. Application accepted by Commissioner of Customs: March 7, 1997.

Docket Number: 97–023. Applicant: Wayne State University, 5050 Anthony Wayne Drive, Detroit, MI 48202. Instrument: Optical Biosensor with Accessories, Model BIOS–1. Manufacturer: Artificial Sensing Instruments, Switzerland. Intended Use: The article is intended to be used to measure the rate of deposition of protein molecules from a flowing solution onto a solid substrate in order to understand the compatibility of artificial organs and other biomaterials. Application accepted by Commissioner of Customs: March 10, 1997.

Docket Number: 97–027. Applicant: New Mexico Institute of Mining and

Technology, 801 Leroy Place, Socorro, NM 87801. Instrument: Electron Microprobe, Model SX 100. Manufacturer: Cameca, France. Intended Use: The article is intended to be used for measuring the x-ray intensity, backscattered and secondary electrons emitted by samples (minerals, rocks, glasses, metals, synthetic mineral phases and ceramics) when bombarded by a focussed electron beam. The data will be used for a number of types of geological, hydrological and metallurgical studies. In addition, the instrument will be used for educational purposes in the courses Geochemistry 589, Theory and Practice of Electron Microprobe Analysis and Geochemistry 489, Experimental Mineralogy. Application accepted by Commissioner of Customs: March 12, 1997.

Docket Number: 97–028. Applicant: Rutgers University, PO Box 6999, Piscataway, NJ 08855–6999. Instrument: ICP Mass Spectrometer, Model Element. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used in tandem with novel automated sampling technologies to determine spatial and temporal patterns of trace metals in sea water and suspended solids in the coastal zone and the dependence of these patterns on biological and physical processes. In addition, the instrument will be used to teach a hands-on instrumentation course for oceanographic and environmental work. Application accepted by Commissioner of Customs: March 12, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–8394 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DS–P

Geological Survey; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–147. Applicant: U.S. Geological Survey, Denver, CO 80225. Instrument: Mass Spectrometer, Model Optima. Manufacturer: Micromass, United Kingdom. Intended Use: See notice at 62 FR 6216, February 11, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a magnetic sector analyzer with a three Faraday cup multicollector and with an internal precision of 0.01 per mil for 20 µl samples of CO_2. This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–8393 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DS–P

Massachusetts Institute of Technology; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–144. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Dual Mixing Stopped-Flow System, Model SF–61. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: See notice at 62 FR 6215, February 11, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: This is a compatible accessory for an existing instrument purchased for the use of the applicant.

The National Institutes of Health advises in its memorandum dated February 4, 1997, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel

Director, Statutory Import Programs Staff.

[FR Doc. 97–8392 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration; Notice

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Trade Development will lead a mission to India to explore opportunities for the renovation and modernization of existing power plants. The mission, which will occur April 28–May 2 in India, will be supported by the Federation of Indian Chambers of Commerce and Industry and the U.S. Embassy.

DATES: Interested U.S. firms should apply to participate in the mission as soon as possible.

FOR FURTHER INFORMATION CONTACT: Request for further information should be made to Helen Burroughs (202) 482–4931 or David Knuti (202) 482–4179 at the Commerce Department's Energy Division.

SUPPLEMENTARY INFORMATION: The criteria for selection of mission participants are:

- Relevance of a company's business line to mission goals.
- Timeliness of completed application (including participation Fee).
- Potential for business in India for company.

Any partisan political activities (including positical contributions) of an applicant are entirely irrelevant to the selection process.

With many power plants operating at 50–60 percent of rated capacity, Indian power officials are turning to renovation and modernization as a method to attack their country's power shortages. The mission will enable participants to become familiar with conditions in Indian electric power plants slated for renovation. They will become personally acquainted with many Indian officials and have the opportunity for one on one sessions.

Dated: March 27, 1997.

John Rasmussen,

Energy Division.

[FR Doc. 97–8345 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DR–P

Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include briefings on trade priorities and issues, Information Technology Agreement, economic sanctions, and Virtual Trade Mission activities. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 12991.

DATES: April 24, 1997.

TIME: 1 p.m. to 4:15 p.m.

ADDRESS: The Washington Court Hotel, Atrium Ballroom, 525 New Jersey Avenue, NW., Washington, DC., 20001–1527. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted by April 16, 1997, to Lori Way, President's Export Council, Room 2015B, Washington, DC, 20230. (Phone: 202–482–1124) Seating is limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: Sylvia Lino Prosak or Lori Way, President's Export Council, Room 2015B, Washington, DC, 20230 (Phone: 202–482–1124).

Dated: March 26, 1997.

Sylvia Lino Prosak,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 97–8289 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 022497A]

Fisheries Bycatch Plan

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of and seeks public comment on the draft NMFS bycatch plan, *Managing the Nation's Bycatch: Priorities, Programs and Actions for the National Marine Fisheries Service.* The NMFS bycatch plan will guide the agency's bycatch-related research and management for the next decade. Any written comments received will be considered by NMFS in the adoption and implementation of the final bycatch plan.

DATES: Written comments will be accepted on or before May 19, 1997.

ADDRESSES: Requests for copies of the NMFS bycatch plan should be directed to the NMFS Office of Science and Technology, 1315 East-West Highway, Silver Spring, MD. 20910. PHONE:(301)713–2363. FAX: (301)713–1875. The NMFS bycatch plan is also available in its entirety on the Internet at http://kingfish.ssp.nmfs.gov/.

FOR FURTHER INFORMATION CONTACT: John F. Witzig, 508–495–2305.

SUPPLEMENTARY INFORMATION:

Background

Interest in bycatch in the Nation's fisheries has received increased attention in the last decade. During this time, NMFS and its constituents have come to agree that fisheries bycatch is an issue of great concern to those interested in sustainable fisheries and marine ecosystems. Congress has emphasized NMFS' responsibility to address bycatch in the Magnuson-Stevens Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Endangered Species Act. Following a series of public symposia and workshops with industry, the conservation community, scientists, Native Alaskan groups, and others, NMFS undertook development of a national bycatch plan. The NMFS bycatch plan will be used as a blueprint for the agency's bycatch-related research and management for the next decade.

In the development of the plan, NMFS conducted a survey of available information on bycatch in the Nation's fisheries and efforts to understand and manage the issue. The survey, which is included in the bycatch plan, is intended to update information previously compiled elsewhere, and to serve as a benchmark from which to judge future efforts in data collection and management efforts to mitigate negative effects of bycatches.

Issues in each of NMFS' administrative regions and on the national level are addressed in detail in the NMFS bycatch plan. This discussion forms the basis for a set of research and management recommendations that will help guide the agency's bycatch-related activities. Broadly, recommendations in the plan address the acquisition of bycatch data, gear technology and selectivity research, the effects of bycatch, research on individual incentive programs to manage bycatch, development and implementation of conservation and management measures to address bycatch, and information exchange and cooperative management.

Request for Comments

NMFS intends that the final version of the bycatch plan will take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, and any other person concerned with this draft NMFS Bycatch Plan.

Dated: March 26, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–8364 Filed 4–1–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Petition of the Philadelphia Stock Exchange, Inc. for Exemptive Relief To Permit United States Customers To Establish or Offset Positions in Certain Foreign Currency Options on the Hong Kong Futures Exchange Ltd. Through Registered Broker-Dealers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of final order.

SUMMARY: In response to a petition by the Philadelphia Stock Exchange, Inc. (''PHLX''), the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') has issued an Order (the ''Order'') exempting from regulation under the Commodity Exchange Act (''Act'' or ''CEA'')[1] transactions in which United States (''U.S.'') customers establish or offset positions in Philadelphia Stock Exchange, Inc. (''PHLX'') foreign currency options on the Hong Kong Futures Exchange Ltd. (''HKFE'') through registered broker-dealers pursuant to regulation by the Securities and Exchange Commission (''SEC'') under the federal securities laws and subject to specified conditions as set forth herein. The Order grants the requested relief pursuant to section 4c(b) of the Act.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel or Christopher W. Cummings, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC. 20581. Telephone number: (202) 418–5450. Facsimile number: (202) 418–5536. Electronic mail: tm@cftc.gov.

[1] 7 U.S.C. 1 *et seq.*

SUPPLEMENTARY INFORMATION: On October 9, 1996, the Commission published a Notice of Proposed Order and Request for Comment (the ''Proposing Release'')[2] in connection with the petition of PHLX (the ''PHLX Petition'') for exemptive relief under sections 4(c) and 4c(b) of the Act.[3] In its Petition, PHLX requested that, to the extent pertinent, the Commission exempt from its regulatory framework certain transactions by U.S. customers in PHLX foreign currency options (''FCOs'') effected on HKFE pursuant to a cross-listing and clearing linkage arrangement between PHLX and HKFE.

I. Background

PHLX and HKFE have entered into a licensing agreement pursuant to which FCOs traded on PHLX may also be traded and offset on HKFE (the ''Linkage''). The Linkage is intended to permit U.S. customers, acting through U.S.-registered broker-dealers, to establish FCO positions on PHLX and offset such positions on HKFE or to establish FCO positions on HKFE and offset the positions on PHLX.[4] PHLX petitioned the Commission for exemptive relief in order to assure that: (1) PHLX FCOs may be cross-listed on HKFE, treated as fungible with PHLX-traded FCOs and cleared through a securities-regulated clearing organization pursuant to the federal securities laws and SEC oversight; and (2) the PHLX and HKFE cross-listed FCOs would not be dually regulated under the securities laws and the CEA, taking cognizance of the policies inherent in Section 4c(f) of the Act, which provides that within the U.S. options on foreign currencies may be traded on both futures and securities exchanges.[5]

A. PHLX Foreign Currency Options Trading

PHLX is a national securities exchange which has been registered with the SEC since 1934. Equity securities, equity and index options, and FCOs are listed for trading on the PHLX. PHLX commenced trading FCOs on December 10, 1982. FCOs currently listed on PHLX include dollar-denominated options on foreign currencies, cross-rate currency options, cash/spot FCOs (which permit the holder to receive the difference between the current foreign exchange spot price and the exercise price of the particular contract) and customized currency options.[6]

As discussed in the PHLX Petition,[7] trading of options on PHLX is governed by PHLX rules that require, *inter alia*, that a customer's account be specifically approved for options trading before any option transactions may be effected by a PHLX member for that customer. Such approval must be in writing, may be made only by a person registered with (and approved by) PHLX as a ''Registered Options Principal,''[8] and may occur only after the PHLX member ''exercise[s] due diligence to learn the essential facts as to the customer and his investment objectives and financial situation.''[9] PHLX rules additionally require that a customer's account be specifically approved, in writing, for transactions in foreign currency options by a ''Foreign Currency Options Principal,''[10] before transactions in foreign currency options are effected.

PHLX also has a customer suitability rule, which prohibits a member firm from recommending any option transaction to a customer unless the firm ''has reasonable grounds to believe that the entire recommended transaction is not unsuitable'' for the customer.[11] Before a broker may permit a customer to begin trading options, SEC and PHLX rules require the broker to provide to the customer an SEC-mandated disclosure document specific to the particular type of option order the customer seeks to enter.[12] PHLX and NASD rules also regulate the content and presentation of advertisements, sales literature, and other options-related communications in connection with sales of PHLX-offered options to the public. Each foreign currency option contract on PHLX is issued and marketed by prospectus pursuant to a registration statement filed with the SEC under the Securities Act of 1933 (the ''Securities Act'').[13]

PHLX rules require member firms to establish written procedures concerning supervision of customer option accounts and of all option orders in such accounts and to maintain a special supervisory structure for foreign currency options.[14] Consistent with SEC regulations, PHLX requires that all order tickets be time-stamped immediately upon execution, and floor brokers and traders are required to report relevant information regarding each option transaction. With the exception of specialists, PHLX floor traders are prohibited from dual trading, that is, trading a particular options class for their own account on the day of

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[2] 61 FR 52921 (October 9, 1996).

[3] 7 U.S.C. 6(c) and 6c(b) (1994), respectively. The intial thirty-day period specified in the Proposing Release for public comment on the PHLX Petition would have expired on November 8, 1996 but was extended to December 11, 1996. 61 FR 59089 (November 20, 1996). The PHLX Petition (dated August 15, 1996) is described in detail in the Proposing Release.

[4] Non-U.S. customers will also be able to use the Linkage to trade PHLX FCOs. Although a non-U.S. customer will be able to establish a position on HKFE through an HKFE broker that need not be a clearing member of PHLX, if that customer wishes to offset or add to that position on PHLX, the customer (or his HKFE broker) must ultimately do so through a broker that is a PHLX member clearing through The Options Clearing Corporation (''OCC'').

[5] 7 U.S.C. 6c(f) (1994) provides that nothing in the CEA ''shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.'' The parallel securities law provision is Section 9(g) of the Securities Exchange Act of 1934 (the ''Exchange Act''), 15 U.S.C. 78i(g) (1994), which provides, in relevant part, that:

Notwithstanding any other provision of law, the [Securities and Exchange] Commission shall have the authority to regulate the trading of * * * any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency * * *.

An option on foreign currency is within the securities law definition of a ''security'' when it is ''entered into on a national securities exchange.'' Exchange Act section 2(a)(1), 15 U.S.C. 77b(a)(1) (1994).

[6] The Proposing Release more fully describes the FCOs listed for trading on PHLX and cross-references the relevant SEC releases approving PHLX's proposed listing and trading of such FCOs. *See* 61 FR 52921 at 52922 (October 9, 1996).

[7] PHLX Petition at 7–11.

[8] A ''Registered Options Principal'' must pass a proficiency examination demonstrating knowledge of the self-regulatory organization requirements applicable to options transactions, including the rules of PHLX and OCC, and also must demonstrate an understanding of options trading. PHLX Rule 1024(a). Both the National Association of Securities Dealers (''NASD'') and PHLX require that persons selling FCOs pass a proficiency examination.

[9] PHLX Petition at 7, quoting from PHLX Rule 1024(b)(ii). As used herein, ''PHLX member'' means a broker-dealer that is either a full member of PHLX or a non-member that has been admitted to PHLX as a ''Foreign Currency Options Participant.'' A Foreign Currency Options Participant must meet the same financial and fitness requirements as a full member of PHLX (including registration with the SEC and compliance with SEC net capital requirements), but avoids paying the full price of a PHLX seat.

[10] A ''Foreign Currency Options Principal'' of a PHLX member must be a general partner, officer or person or appropriate supervisory or managerial rank who has successfully completed a registered options principal examination, allied member's examination or other principal's examination (or equivalent demonstration of knowledge) and who has also successfully completed an examination prescribed by PHLX to demonstrate adequate knowledge of foreign currency options and foreign currency markets. PHLX Rule 1025(c).

[11] PHLX Petition at 8, quoting from PHLX Rule 1026(a).

[12] Exchange Act Rule 9b–1 provides that an options disclosure document must include information delineating the mechanics of options trading, options trading risks, the uses of options, transaction costs, margin requirements, and relevant tax issues. 17 CFR 240.9b–1(1996). PHLX Rule 1029 also requires delivery of the Rule 9b–1 options disclosure document.

[13] The prospectus prepared and delivered pursuant to the Securities Act is a separate document from the options disclosure document required to be furnished to customers under Exchange Act Rule 9b–1.

[14] PHLX Petition at 9.

execution of a customer order in the same options class.[15]

PHLX has represented that HKFE has agreed to adopt rules similar to certain of PHLX's rules and requirements applicable to cross-listed PHLX FCOs in order assure fungibility.[16] HKFE has further agreed not to adopt any rules that conflict with PHLX's options rules.[17]

B. Proposed PHLX–HKFE Linkage

Incorporated in 1976, HKFE is licensed as an exchange company by the Governor in Council of Hong Kong and is governed by a board of directors consisting of both HKFE members and non-members from the Hong Kong financial and business community. In addition, the operations of the HKFE and the HKFE Clearing Corporation Limited (''HCC''), HKFE's subsidiary, are under the jurisdiction of and are regulated by Hong Kong's independent financial regulatory body, the Securities and Futures Commission (''SFC'') pursuant to the Commodities Trading Ordinance, which treats options on foreign currencies similarly to securities options for such purposes, and which regulates fitness and qualifications of persons involved in customer order solicitation and acceptance, imposes minimum financial requirements upon persons accepting customer funds, and establishes requirements for the protection of customer funds from misapplication, recordkeeping and reporting, sales practices and risk disclosure, and procedures to ensure compliance with such regulatory requirements. It currently is expected that the existing regulatory structure will continue beyond July 1997, notwithstanding the changeover to mainland Chinese rule.

Currently, no FCOs are listed for trading on HKFE. The Linkage provides for cross-listing of PHLX FCOs, permitting U.S. customers and non-U.S. customers to establish positions in PHLX FCOs on HKFE and offset them on PHLX or to establish PHLX FCO positions on PHLX and offset them on HKFE. Only registered broker-dealers would be permitted to carry the account of FCOs traded through the Linkage on behalf of U.S. persons (and to clear FCOs on the PHLX side of the Linkage for non-U.S. customers). The Linkage will be applicable to all foreign currency option contracts for which PHLX has received SEC approval. Pursuant to the Linkage, trading in PHLX FCOs will be permitted on HKFE during Asian business hours in the same manner as such FCOs are currently traded on PHLX.[18] In general, auction trading of PHLX's FCOs occurs between 2:30 a.m. and 2:30 p.m. Eastern Time each business day. The Linkage thus effectively extends the trading hours for PHLX foreign currency option contracts. FCOs, regardless of where originated, will be marketed by means of the same prospectus and subject to the same securities margin requirements.

The Commission has permitted appropriately designed linkages between exchanges in different time zones as a means of lengthening trading hours, broadening distribution of products, enhancing trading volume and open interest, and increasing the capacity to offset risk or adjust portfolios in a timely manner without incurring excessive transaction costs.[19] In its Petition, PHLX states that it expects that the proposed Linkage will stimulate trading interest in PHLX's FCOs in the Far East. The PHLX agreement with HKFE does not preclude similar agreements between HKFE and U.S. futures exchanges with respect to foreign currency options. Consequently, a similar linkage agreement between HKFE and a futures exchange potentially could permit such an exchange to extend its hours and allow registered futures commission merchants (''FCMs'') to offset currency options undertaken there on HKFE.

OCC, owned equally by the five national securities exchanges that list options, functions as the issuer and clearing organization for all options traded on national securities exchanges, including the FCOs traded on PHLX. OCC is regulated as a clearing agency by the SEC under section 17A of the Exchange Act[20] and the Standards for the Registration of Clearing Agencies issued thereunder.[21] OCC will issue, clear and settle PHLX FCOs that are cross-listed on HKFE.[22] Subject to SEC approval, PHLX, HKFE, and OCC expect to enter into an International Market Agreement (the ''IMA''), which will govern the trading and clearance of transactions in FCOs cross-listed on HKFE. The IMA will address issues relevant to the trading and clearance of the PHLX contracts, including issuance, disclosure, expiration months, exercise prices, units of trading, margin, trade information comparison, clearing and settlement of PHLX FCOs traded on HKFE, and the respective rights and obligations of the parties with respect to such options.

Subject to SEC approval, OCC expects to execute an ''Associate Clearinghouse Agreement'' with HCC (or another affiliate of HKFE) organized for the purpose of acting as a clearing organization for the PHLX foreign currency option contracts traded on HKFE, under which HCC (or such affiliate) will act as an ''associate clearinghouse'' of OCC. The Associate Clearinghouse Agreement will provide that HCC (or other HKFE affiliate) will be treated in all material respects as an OCC clearing member for purposes of clearing trades in PHLX foreign currency options for HKFE members that are not clearing members of OCC, whether such trades are effected on HKFE or (through PHLX members) on PHLX.[23] As such, HCC (or other HKFE affiliate) will be subject to SEC oversight, albeit indirectly through the SEC's oversight of OCC.

C. Request for Comments

In the Proposing Release, the Commission sought comments on any aspect of the Petition that commenters believed might raise issues under the CEA or Commission regulations. In particular, the Commission invited comments regarding: (1) The appropriateness of addressing the transactions specified in the Proposing Release pursuant to the Commission's exemptive authority under section 4(c) and/or pursuant to the Commission's plenary authority under section 4c(b); (2) whether the proposed exemption is consistent with the standards set forth in section 4(c) of the CEA; (3) whether there is sufficient authority under existing law for the SEC to exercise its regulatory and supervisory authority over transactions effected pursuant to the Linkage; (4) any material adverse

[15] PHLX Petition at 11.

[16] Such rules include those regarding margin levels and changes thereof, position and exercise limits, reporting and liquidation of positions, quote spread parameters, minimum fractional changes, allocation of exercise notices, series of options open for trading, customized FCOs and settlement of dollar-denominated FCOs.

[17] PHLX Petition at 11.

[18] The licensing agreement between PHLX and HKFE provides that PHLX FCOs may not be traded on HKFE between the hours of 2:00 a.m. and 3:00 p.m. Eastern Time, Monday through Friday.

[19] The Commission has approved linkage arrangements between the Singapore International Monetary Exchange, Ltd. (''SIMEX'') and CME (approved August 28, 1984); between the Commodity Exchange, Inc. (''COMEX'') and the Sydney Futures Exchange, Ltd. (''SFE'') (approved August 1, 1986); between Marché à Terme International de France (''MATIF'') and the CME (approved September 24, 1992); and between the New York Merchantile Exchange and SFE (approved September 1, 1995).

[20] 15 U.S.C. 78q–1 (1994).

[21] Exchange Act Release No. 34–16900 (June 17, 1980) 45 FR 41920.

[22] PHLX Petition at 5. However, as noted below, OCC expects that FCO transactions for HKFE members that are not clearing members of OCC will be cleared through HKFE or an affiliate of HKFE.

[23] Provision will be made, however, for matters such as reconciling non-U.S. accounting principles.

effects that granting the PHLX petition would have upon other securities exchanges, futures exchanges, or Commission registrants, such as FCMs, from a competitive or other perspective; (5) the type of risk assessment information that should be available to the Commission regarding FCO transactions by FCM affiliates; (6) whether the Commission should attach any conditions to any exemptive relief that may be granted; and (7) any other issues relevant to the PHLX Petition.

Five comment letters were received: one from OCC, one each from the Chicago Board of Trade (''CBOT'') and the Chicago Mercantile Exchange (''CME''), both designated contract markets, one from the SEC, and one from the Futures Industry Association Inc. (''FIA''), a futures industry trade organization. The comments of the SEC, FIA and OCC generally supported granting the relief sought by the PHLX Petition; the CBOT and CME comment letters offered conditional or qualified support and identified various concerns for future consideration by the Commission.

II. The Order

Based upon its consideration of the PHLX Petition and the comments received, and subject to SEC approval of the relevant rules and agreements establishing and governing operation of the Linkage, the Commission has determined to issue an order, pursuant to its authority under Section 4c(b) of the Act, granting an exemption from Commission regulation consistent with certain conditions more particularly set forth herein, for Linkage transactions. As discussed below, the Commission has considered the public comments received in response to the Proposing Release in connection with issuing this Order.

A. Statutory and Regulatory Basis of the Order

1. The Commission's Authority To Grant the Requested Relief

Section 4c(b) of the Act prohibits persons from entering into any transaction involving any commodity regulated under the CEA which is of the character of or is commonly known ''as an option * * * contrary to any rule, regulation or order of the Commission * * *.'' Section 4c(b) vests the Commission with the authority to adopt orders, rules or regulations to prohibit or allow commodity option transactions, upon notice and opportunity for hearing. Section 4c(b) of the Act, therefore, affords the Commission plenary authority to permit the trading of commodity options outside of designated futures exchanges.[24]

CME and OCC commented that in order to permit the Linkage the Commission would be required to grant particularized relief and that a new rule, order or regulation must be adopted under section 4c(b) for this purpose. The commenters generally concurred that the appropriate basis for granting the relief requested would be pursuant to an order issued under section 4c(b). Several commenters nonetheless urged the Commission to apply the standards required for exercising its exemptive authority under section 4(c) of the Act in determining whether to grant relief under section 4c(b). The SEC stated that the CFTC could appropriately address Linkage transactions under either section 4(c) or section 4c(b), as both sections provide the CFTC with broad flexibility to address the transactions encompassed by the PHLX Petition. FIA and the CBOT, however, commented that basing an exemptive order solely on section 4c(b) would be more consistent with the CEA than an order based upon sections 4c(b) and 4(c).

2. Consistency with Section 4c(f)

The Commission believes that while section 4c(f) may not itself confer authority to grant the requested relief to the Linkage, such relief would be consistent with the policy of section 4c(f) of the CEA, which provides that nothing in the CEA ''shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.''[25] In its petition, PHLX contended that a PHLX FCO would remain ''an option on foreign currency traded on a national securities exchange,'' despite being cross-listed on HKFE, which is not so registered.[26] PHLX urged that ''[f]or this purpose, cross-listing of PHLX foreign currency options on the HKFE may be viewed as adding another PHLX trading floor, or as lengthening the trading day for PHLX foreign currency options.''[27] Thus, PHLX contended that section 4c(f) should remove the Linkage from CFTC jurisdiction, while requesting exemptive relief under sections 4(c) and 4c(b) ''to eliminate any potential uncertainty as to the status of these transactions.''[28]

3. Consistency with Section 4(c)

Section 4(c) provides, in relevant part, that the Commission may exempt, ''by rule, regulation, or order, after notice and opportunity for hearing, * * * any agreement, contract, or transaction * * * that is otherwise subject to'' the exchange-trading requirement of section 4(a) from all provisions of the CEA except section 2(a)(1)(B).[29] Such exemption may be granted upon a determination by the Commission that: (1) The exemption is in the public interest;[30] (2) the requirements from

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[24] Section 4c(b) provides, in relevant part:

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an ''option'' [or] ''privilege'', * * * contrary to any rule, regulation, or order of the commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.

[25] Section 4c(f) is part of the jurisdictional accord between the SEC and the CFTC that was codified in the Futures Trading Act of 1982. Public Law 97–444, Act of January 11, 1983, effective January 11, 1983, sec. 102, 96 Stat. 2294, 2296. The effect of the provision was that the SEC would have jurisdiction over FCOs that trade on national securities exchanges, while the CFTC continued to have jurisdiction to regulate other trading of FCOs. H.R. Rep. No. 97–565, 97th Cong., 2d Sess. 82 (1982).

[26] The SEC and OCC comments agreed with this characterization. The SEC stated that it would treat the Linkage as an operating extension of the trading of FCOs on PHLX and therefore as being subject to the full scope of the federal securities laws (noting that the FCOs traded on PHLX and HKFE would be identical, would be cleared and settled through OCC, and would be traded pursuant to an agreement between PHLX and HKFE, as are other linked securities contracts). The CBOT and the CME, however, disputed that the Linkage should be treated as an extension of the PHLX trading floor and questioned the validity of any assertion of SEC jurisdiction over the establishment or offsetting of FCO positions on HKFE.

[27] PHLX Petition at 2.

[28] *Id.* In its comment letter, OCC supported PHLX's request that the CFTC issue an exemption to eliminate potential uncertainty. CME and CBOT disputed PHLX's assertion that transactions in the cross-listed FCOs are excluded from the CFTC's jurisdiction, contending that HKFE is not a national securities exchange and should not be characterized as an additional PHLX trading floor.

[29] 7 U.S.C. 6(c)(1) (1994). In particular, section 4(c)(1) provides:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract or transaction (or class thereof) that is otherwise subject to subsection (a) (the exchange-trading requirement) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

[30] As the Commission noted in the Proposing Release, the Conference Committee Report on the legislation enacting section 4(c) indicated that the ''public interest'' includes ''the national public

which exemption is sought should not be applied to the agreement, contract, or transaction at issue and the exemption would be consistent with the purposes of the CEA; (3) the agreement, contract or transaction will be entered into solely between ''appropriate persons;''[31] and (4) the agreement, contract or transaction will not have a material adverse effect upon the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

Several commenters expressed the view that, because section 4(c) provides the Commission with authority to exempt from CEA regulation transactions in futures contracts on or subject to the rules of a U.S. exchange, it is not the appropriate basis for an exemptive order with respect to the PHLX/HKFE Linkage. However, although CBOT, CME and OCC argued against reliance by the Commission upon section 4(c) as the basis for granting an exemption for Linkage transactions, CBOT and FIA urged the Commission to consider the merits of the PHLX Petition in light of the standards set forth in section 4(c).[32] The Commission concurs that the standards for exemption established by section 4(c) are relevant in determining whether an order of relief should be issued under section 4c(b). Accordingly, the Commission has considered the PHLX Petition in light of the criteria of section 4(c) and believes, for the reasons discussed below, that granting the Petition is consistent with such criteria.

a. Consistency with the Public Interest and Purposes of the Act. With respect to the public interest standard of section 4(c), the CBOT commented that ''(w)hen the retail public is involved, it would seem that the only way an exemption from CEA regulation could be consistent with the public interest is if another comparable regulatory scheme also applies.'' The CBOT expressed the view that before deciding to grant exemptive relief, the Commission should carefully examine ''the nature and reach'' of the SEC's regulation of broker-dealers, including the scope of the SEC's authority to regulate ''broker-dealers' activities with respect to foreign currency options traded on the HKFE, given that such instruments are technically not securities.''

The Commission believes that based upon the SEC's analysis of its regulatory authority with respect to Linkage transactions and the other materials of record, the concerns voiced by the CBOT are adequately addressed. Under the linkage, FCOs may be traded for U.S. customers on a foreign futures exchange. The Commission does not and, indeed, cannot directly regulate foreign boards of trade, under section 4(b) of the Act.[33] Under that section, however, the Commission has authority to adopt regulations prohibiting fraud, setting financial standards, and imposing registration, recordkeeping, reporting and other obligations on persons trading futures contracts for U.S. customers on non-U.S. exchanges. Pursuant to part 30 of its regulations, the Commission regulates the offer and sale to U.S. persons of commodity option contracts made on or subject to the rules of foreign boards of trade. However, the Commission's rules no longer require prior authorization by the Commission before a foreign commodity option may be offered or sold to U.S. customers, and therefore, U.S. customers could trade foreign currency options on HKFE without further action by the Commission.

Moreover, irrespective of the characterization of HKFE FCOs cross-listed with PHLX FCOs, the Commission believes that the SEC has authority to exercise regulatory functions comparable to those that the CFTC would be able to exercise with respect to transactions to be established or offset on HKFE through the Linkage. The CFTC itself could not directly regulate the HKFE market and would be limited to regulating sales to U.S. persons from locations outside the U.S. in accordance with section 4(b) of the Act. The SEC regulates broker-dealer fitness, capital requirements, sales practices and protection of customer funds. In the limited circumstances of the PHLX-HKFE Linkage, therefore, based upon the SEC's regulatory authority and program applicable to registered broker-dealers, and subject to the conditions discussed below, the Commission believes that its deference to SEC regulation over the Linkage as a whole to facilitate the Linkage arrangement is warranted, especially as such deference is without prejudice to a similar arrangement for linking a U.S. futures market to HKFE or the regulatory characterization of foreign currency options in that context.

Although it acknowledged that it does not have express authority over activities occurring on HKFE, the SEC cited its authority under the Exchange Act to condition approval of the PHLX rules necessary to implement the Linkage upon establishment of adequate safeguards addressing surveillance-sharing between PHLX and HKFE, as well as between the SEC and Hong Kong regulators; provisions for trading and clearing the FCOs (on PHLX and on HKFE); and the requirement that the FCOs be registered under the Securities Act. The SEC has authority over OCC (and indirectly over HCC or other HKFE affiliate) and the broker-dealers who will effect Linkage transactions for U.S. customers and offset on PHLX linked transactions undertaken for U.S. customers. It therefore can require meaningful safeguards as a condition for approval of the implementing PHLX and OCC rule changes for the Linkage.[34]

The FIA, OCC and SEC urged that the Commission find that the requested exemption would be consistent with the public interest and the purposes of the Act. To this end, FIA commented that the requested exemption would not be contrary to the essential purposes of the Act (customer protection, financial integrity and market integrity) because: (1) FCOs executed on HKFE may be offered and sold in the U.S. only

interests noted in the (CEA), the prevention of fraud and the preservation of the financial integrity of markets, as well as the promotion of responsible economic or financial innovation and fair competition,'' and that the Commission should ''assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants'' and that an exemption should not be denied ''solely on grounds that it may compete with or draw market share away from the existing market.'' H.R. Rep. No. 978, 102d Cong., 2d Sess. 78–79 (1992).

[31] ''Appropriate person'' is defined in section 4(c)(3) (A)–(K) of the Act to include, generally, a bank or trust company, a savings association, an insurance company, a registered investment company, a commodity pool operated by a Commission registrant, certain business entities and employee benefit plans, governmental entities, registered broker-dealers, registered futures commission merchants, floor brokers and floor traders and ''[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications or the applicability of appropriate regulatory protections.'' 7 U.S.C. 6(c)(3) (A)–(K)(1994).

[32] OCC stated that ''the Commission may of course choose as a policy matter to consider the standards of section 4(c).'' CME stated that even if the Commission had authority under section 4(c) to grant the requested relief, the proposed exemption is not consistent with (and does not meet the standards set forth in) section 4(c).

[33] 7 U.S.C. 6(b) (1994). Section 4(b) provides that the Commission may not adopt any rule that requires Commission approval of a foreign board of trade's contracts or rules, or that governs in any way any rule or contract term or action of a foreign board of trade.

[34] CBOT urged the Commission to consider carefully the nature and scope of SEC and NASD regulation (including whether SEC and NASD are willing or prepared to accept this jurisdiction, whether safeguards exist equivalent to the Commission's segregation requirements, and whether the requested relief amounts to a transfer to the SEC of Commission jurisdiction over foreign currency options). The SEC has indicated in its comment letter that it is prepared to exercise regulatory oversight with respect to transactions over the Linkage. Moreover, PHLX FCOs are already subject to SEC and PHLX regulation, and broker-dealer practices are subject to NASD regulation.

through registered broker-dealers in accordance with sales practice and related customer protection rules of PHLX and the NASD;

(2) the financial integrity of the transactions will be assured because they will be settled and cleared by OCC (and trades on HKFE for non-OCC clearing members will be carried out pursuant to an agreement with OCC); and (3) market integrity is assured by the Intermarket Surveillance Group Surveillance Sharing Agreement between PHLX and HKFE. The SEC stated that FCOs cross-listed on HKFE ''would be subject to full SEC regulation'' and that ''subjecting such trading to a single regulatory regime is appropriate and might additionally facilitate efficiencies in the trading, clearance and settlement of such transactions.''

OCC expressed the view that the proposed relief would be consistent with the public interest because it is an essential precondition to the Linkage, and the Linkage itself is in the public interest because it would ''contribute to greater depth and liquidity in the market for PHLX FX Options'' and ''foster global market efficiency and reduce systemic risk by standardizing the currency options traded on PHLX and HKFE and centralizing the clearance and settlement process for trades in such options.'' The currency cash market is a 24-hour market. Establishing an Asia time zone link extends the liquidity and the hedging usefulness of the PHLX foreign currency options market and renders it more competitive with the larger over-the-counter market, subject to significant regulatory safeguards for participants. Pursuant to part 30 of its regulations, the Commission routinely evaluates the comparability of other regulatory regimes. In this case, without ceding authority or characterizing the jurisdictional status of the HKFE FCOs, the Commission concludes that sufficient grounds exist for deference to the SEC regulatory regime, especially in light of the policies underlying section 4c(f), which supports trading in foreign currency options in both domestic securities and futures exchanges, subject to either securities or futures laws and the attendant regulatory frameworks, respectively.

b. The ''Appropriate Person'' Criterion. Section 4(c) of the Act defines the term ''appropriate person'' to include various categories of business and corporate entities, including banks and trust companies, savings associations; insurance companies, registered investment companies, CEA-regulated commodity pools, corporations or other business entities with net worth of $1 million or total assets of $5 million, and ''[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications or the applicability of appropriate regulatory protections.'' [35] In its Petition, PHLX urges that because PHLX FCOs ''are subject to the full panoply of SEC regulation under the securities laws,'' appropriate regulatory protections apply to the Linkage, and the Commission therefore should be able to determine that any person eligible to purchase or sell such options under the SEC regulatory scheme is an ''appropriate person'' within the meaning of section 4(c)(3)(K).[36] In its comment letter, the SEC agreed that the class of permissible FCO participants proposed by PHLX may not be identical to those designated in the enumerated categories of section 4(c)(3) (A)–(J) but concluded that ''it is appropriate for the CFTC to determine, pursuant to 4(c)(3)(K), that such persons are appropriate persons because they meet the requirements set forth by PHLX and approved by the SEC for persons engaged in exchange-traded options transactions.''

Section 4(c)(3)(K) permits the Commission to determine that persons engaging in transactions that are otherwise regulated by another governmental agency qualify as ''appropriate persons.'' In adopting rules exempting from CFTC regulation certain hybrid instruments, the Commission stated that ''appropriate persons'' eligible for that exemption would include ''person[s] permitted by applicable securities or banking requirements to purchase or enter into the security (component) of the hybrid instrument * * *.'' 58 FR 5580 (January 22, 1993) (release adopting final rules regarding the regulation of hybrid instruments). As discussed above, the SEC, PHLX and NASD requirements applicable to U.S. customers in FCO transactions conducted on PHLX will apply equally to cross-linked FCO transactions on HKFE. Based upon the restrictions imposed by these requirements upon participation in FCOs cross-linked on HKFE and the other regulatory safeguards applicable to such transactions, the Commission believes that the ''appropriate persons'' criterion is satisfied with respect to U.S. persons engaging in FCO transactions pursuant to the Linkage.[37]

c. No Material Adverse Effect on Regulatory or Self-Regulatory Responsibilities. Commenters differed in their assessment as to whether granting the PHLX Petition would have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA. The Commission believes that with appropriate risk assessment information sharing, and retention of its own ability to terminate relief, granting the requested relief will not interfere with the Commission's regulatory program or adversely affect the ability of any U.S. contract market to discharge its regulatory duties.

B. Risk Assessment

The Commission requested comments regarding the type of risk assessment information that should be available to it concerning FCO transactions effected by FCM affiliates. The two commenters who addressed this issue. The SEC noted that all PHLX/HKFE cross-listed FCO transactions involving U.S. customers must be effected through U.S.-registered broker-dealers and that the SEC's risk assessment rules would thus be applicable and would result in the provision of important risk assessment data to the SEC. The SEC has confirmed that it would coordinate information-sharing with the CFTC in the event that problems developed warranting CFTC review. Similarly, the OCC stated that there was no need for risk assessment information in addition to that which the Commission currently obtains regarding FCM affiliate transactions on PHLX, since PHLX and HKFE FCO transactions pose the same risks. The Commission nonetheless has conditioned this relief on its access to information on transactions through the Linkage relevant to exercise of its and its markets' supervisory duties with respect to FCMs or other relevant futures market participants engaged in Linkage transactions.

C. Conditions

The Commission also invited comment concerning whether conditions should be attached to any exemptive relief granted in response to the PHLX Petition. Several commenters addressed this subject. The SEC recommended that the Commission condition exemptive relief on assured availability to the Commission of information exchanged pursuant to the terms of the Intermarket Surveillance Group Surveillance Sharing Agreement

[35] 7 U.S.C. 6(c)(3) (1994).

[36] PHLX Petition at 16.

[37] However, an ''appropriate person'' for purposes of Linkage transactions in accordance with this Order may not be an ''appropriate person'' in other contexts.

between PHLX and HKFE and suggested that the Commission consider conditioning relief upon the SEC's approval of a PHLX implementing rule submission under section 19(b) of the Exchange Act. The CME urged the Commission to ensure that adequate regulatory protections exist with respect to any trading activities that take place in Hong Kong, suggesting, by way of example, that the Commission consider whether the policies underlying Rule 30.7 [38] require that the foreign futures and options secured amount for HKFE positions be separately accounted for and segregated from customer funds used to margin PHLX positions. OCC commented that it saw no need for any conditions other than that the Linkage be operated substantially as described in the PHLX Petition.

D. Other Issues Raised by Commenters

The FIA urged the Commission to consider granting relief for registered broker-dealers that are also registered as FCMs from the restrictions on options transactions applicable to FCMs set forth in Commission Rule 1.19 and to consider whether any relief with respect to the provisions of subchapter IV of Chapter 7 of the Bankruptcy Code [39] and part 190 of the Commission's rules may be necessary. CME commented that granting the requested relief would amount to sanctioning the cross-margining of securities options and futures positions at the customer level and that if the Commission grants the PHLX Petition, CME expects to be permitted to expand its cross-margining program with OCC to include retail customer accounts. Because the PHLX FCOs are functionally identical, whether traded on PHLX or HKFE, and because offsetting positions will cancel, rather than hedge each other, the Commission believes that cross-margining arrangements raise different issues from the cross-listing of FCOs. In any event, the Commission will address any such request on its individual merits and believes that a response to CME is outside the scope of this proceeding.

E. Conclusion

Regulatory authority over trading activity in FCOs is divided between the SEC and the CFTC, and absent a grant of exemptive relief by the CFTC, participation by U.S. customers in the HKFE side of the proposed Linkage would be subject to regulation under the CEA. Nonetheless, upon consideration of the PHLX Petition and the comments received and for the reasons stated above, the Commission has determined to exercise its authority under Section 4c(b) of the Act by issuing the attached Order granting the Petition, provided that certain conditions are met. The Commission believes that under the specific circumstances of the Linkage, and subject to certain conditions, deference to the SEC to provide regulatory oversight for the Linkage is appropriate.

The Commission believes that the SEC's existing regulation of registered broker-dealers and clearing organizations, combined with its ability to condition approval of the PHLX and OCC rule changes necessary to implement the Linkage upon incorporation of appropriate safeguards will enable the SEC to exercise regulatory authority over the HKFE side of the Linkage comparable to that which the Commission would be able to exercise. Neither agency is empowered directly to regulate HKFE, but each has statutory authority to regulate assigned classes of market participants, and thereby, activities on HKFE of such persons. The Commission believes that the existing regulatory framework applicable to HKFE in Hong Kong, combined with the SEC's regulation of U.S. broker-dealers effecting transactions over the Linkage and regulation of OCC, will be adequate in the absence of direct regulation of trading on HKFE by U.S. regulatory agencies. Additionally, the SEC has authority over the design of relevant clearing arrangements and the rules of PHLX establishing the operating agreement between the markets for the Linkage. The Commission further believes that the risk assessment information provided to the SEC will be adequate but that it should likewise be provided to the Commission upon request or as otherwise appropriate in light of market conditions.

The Commission also believes that the standards set forth in section 4(c) will be met by the Linkage, in that: (1) Granting the requested relief is in the public interest, because due to the applicability of a regulatory scheme comparable to the Commission's, the Linkage can operate to expand the availability and usefulness of PHLX FCOs, while maintaining regulatory protections for customers and markets; (2) granting the requested relief will neither interfere with the Commission's ability to carry out its regulatory program nor adversely affect the ability of any contract market to carry out its self-regulatory duties; and (3) in view of the regulatory and self-regulatory requirements regarding eligibility of customers to effect transactions over the Linkage, it is appropriate to determine pursuant to section 4(c)(3)(K) that participation in the Linkage will be limited to appropriate persons.

Several commenters raised related issues which the Commission does not believe affect the appropriateness of granting the PHLX Petition. In response to concerns that broker-dealers that are also registered as FCMs may be considered to be in violation of Rule 1.19 as a result of transactions in FCOs on the HKFE, the Commission hereby confirms that PHLX FCOs traded on the Linkage may be considered exchange-traded ''commodity options'' for purposes of Rule 1.19(a) such that an FCM would not be precluded from taking a position in such FCOs. With respect to FIA's concern as to the applicability of Subchapter IV of Chapter 7 of the Bankruptcy Code, the Commission has conditioned its exemptive order upon the applicability of the SEC's segregation requirements for securities,[40] and Subchapter III of Chapter 7 of the Bankruptcy Code [41] to securities broker-dealers. Consequently, PHLX represents that it will take whatever contractual or regulatory actions may be necessary to cause the cross-listed FCOs to be treated as securities for purposes of the Bankruptcy Code and for purposes of the segregation requirements under Exchange Act Rule 15c3–3.

The Commission thus has determined that an exemption with respect to the Linkage should be conditioned upon implementation of the Linkage pursuant to PHLX and OCC rules approved by the SEC, operation of the Linkage (including restrictions on participation by U.S. customers) substantially as described in the PHLX Petition, availability to the Commission of adequate risk assessment information, availability to the Commission of surveillance information required to be exchanged pursuant to the Surveillance Sharing Agreement between PHLX and HKFE and the completion of any necessary contractual or other measures to cause FCOs traded over the Linkage to be treated as securities for purposes of securities segregation requirements and under the Bankruptcy Code.

[38] Rule 30.7 sets forth an FCM's duty to maintain in a segregated account at an appropriate depository sufficient money or other property to cover all of its current obligations to foreign futures and options customers and to keep records and make daily computations with respect to such obligations.

[39] 11 U.S.C. 761–766 (1994).

[40] Exchange Act Rule 15c3–3, 17 CFR 240.15c3–3 (1996).

[41] 11 U.S.C. 741–752 (1994).

Order of the Commodity Futures Trading Commission Exempting From Regulation Certain Foreign Currency Option Transactions

Whereas, it is the Commission's understanding, based upon representations made by the Philadelphia Stock Exchange, Inc. (''PHLX'') as set forth in a Request for Exemptive Relief from regulation under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), dated August 15, 1996, that PHLX and the Hong Kong Futures Exchange Ltd. (''HKFE'') have entered into a licensing agreement (the ''Linkage'') pursuant to which foreign currency options (''FCOs'') listed and traded on PHLX will be cross-listed and traded on HKFE. The Linkage will permit PHLX FCOs to be traded on HKFE during Asian business hours. Transactions for U.S. customers will be effected only through brokers or dealers registered as such with the Securities and Exchange Commission (''SEC'') on behalf of persons meeting the PHLX customer options account approval and suitability standards (approved by the SEC) for persons engaging in options transactions. Transactions on PHLX for non-U.S. customers, whether or not initiated through a non-PHLX member, must ultimately be effected through a member of PHLX that is a clearing member of The Options Clearing Corporation (''OCC'').

Whereas, transactions effected through the Linkage will be issued, cleared and settled by OCC pursuant to the terms of an International Market Agreement (''IMA'') among PHLX, HKFE and OCC. Clearing of trades in PHLX FCOs for HKFE members that are not clearing members of OCC (whether such trades are effected on PHLX or on HKFE) will be made by an OCC clearing member or an affiliate of HKFE (as an ''associate clearinghouse'' of OCC) pursuant to an Associate Clearinghouse Agreement between OCC and such affiliate of HKFE, and such associate clearinghouse will be treated in all material respects as a clearing member of OCC for purposes of Linkage transactions.

Whereas, PHLX and HKFE have entered into an Intermarket Surveillance Group Surveillance Sharing Agreement obligating each to use its best efforts to obtain and provide information required by the other to fulfill its self-regulatory responsibilities.

Whereas, PHLX will submit for SEC approval an amendment to PHLX's rules, permitting the establishment and operation of the Linkage, and that OCC will likewise submit a rule amendment to accommodate clearing and settlement functions with respect to the Linkage.

And Whereas, PHLX represents that the licensing agreement and other relevant documentation, including the Surveillance Sharing Agreement, the IMA and the Associate Clearinghouse Agreement, are consistent with the aforesaid understanding of the Linkage arrangement and will be submitted to the SEC for its review in conjunction with the SEC's review of PHLX and OCC rule changes to implement the Linkage.

It is therefore ordered, pursuant to section 4c(b) of the Commodity Exchange Act (the ''Act'') and based upon the Commission's consideration of the representations set forth in the PHLX Petition and the comments received pursuant to the Notice of Proposed Order and Request for Comments, that transactions in FCOs listed for trading on HKFE as described in the PHLX Petition are exempt from all provisions of the Act and the Commission's rules promulgated thereunder subject to the following conditions:

1. That the Linkage is operated substantially as described in the PHLX Petition;

2. That FCO transactions effected pursuant to the Linkage on behalf of U.S. customers are undertaken through broker-dealers registered as such with the SEC, cleared through clearing facilities subject to SEC oversight, and restricted to customers who satisfy the customer options account approval and suitability standards set forth in PHLX rules approved by the SEC;

3. That the Linkage is implemented pursuant to rules of PHLX and OCC approved by the SEC pursuant to section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''), 15 U.S.C. 78s;

4. That HKFE and PHLX will make available to the Commission upon request all information required to be exchanged under the terms of the Intermarket Surveillance Group Surveillance Sharing Agreement between PHLX and HKFE;

5. That HKFE is subject to rules which establish fitness and qualifications of persons through whom customer orders are solicited or accepted, minimum financial requirements for persons that accept customer funds, measures for protection of customer funds from misapplication, recordkeeping and reporting requirements, minimum sales practice and risk disclosure standards, and procedures to ensure and to audit for compliance with regulatory requirements;

6. That all risk assessment information pertinent to the Linkage provided to the SEC by broker-dealers participating in the Linkage (and that is not otherwise available to the CFTC pursuant to its risk assessment rules) is made available to the Commission by the SEC and/or PHLX upon request and as otherwise appropriate; and

7. That the FCO positions, regardless of where established, will be treated as securities for purposes of required segregation pursuant to Exchange Act Rule 15c3–3 and for application of the relevant insolvency laws, including the Bankruptcy Code and rules, and Securities Investor Protection Act of 1970.

By issuing this Order, the Commission does not intend to prohibit or restrict the ability of any futures exchange to establish a similar linkage arrangement with HKFE.

By issuing this Order, the Commission takes notice of its surveillance and enforcement information sharing arrangements with the appropriate Hong Kong regulatory authorities.

The Commission retains the authority to terminate or otherwise to modify this relief at such time as it determines that exemption of transactions through the Linkage is no longer in the public interest.

Issued in Washington, DC on March 28, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–8365 Filed 4–1–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on 18 April 1997 at the Tulsa Port of Catoosa, located at 5350 Cimarron Road in Catoosa, Oklahoma, (Tel. 918–266–2291). Registration will begin at 8:30 AM and the meeting is scheduled to adjourn at 5:00 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, 202–761–8569, Headquarters, U.S. Army Corps of Engineers, CECW–PD, Washington, DC 20314–1000.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–8336 Filed 4–1–97; 8:45 am]

BILLING CODE 3710–92–M

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Delete record systems notice.

SUMMARY: The Department of the Navy proposes to delete a records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletions will be effective on May 2, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report.

Dated: March 26, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N04385–1

SYSTEM NAME:

IG Investigatory System *(February 22, 1993, 58 FR 10740).*

Reason: Records in this system were consolidated into N05041–1, entitled Inspector General (IG) Records on March 18, 1997 at 62 FR 12806.

[FR Doc. 97–8139 Filed 4–1–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 2, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 27, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Title: Application for the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (New Grants and Continuation Grants).

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden: Responses: 2,350; Burden Hours: 28,100.

Abstract: The Comprehensive application is for competition awards with a two-stage application process: preliminary and final. Continuations are non-competitive grants for current comprehensive program grantees making satisfactory progress.

Office of Postsecondary Education

Title: Lender's Application for Payment of Insurance Claim.

Frequency: As needed.

Affected Public: Business or other for-profit; State and Federal Government Agencies.

Annual Reporting and Recordkeeping Hour Burden: Responses: 6,202; Burden Hours: 2,604.

Abstract: The Lender's Application for Payment of Insurance Claim is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Office of Special Education and Rehabilitative Services (OSERS) Peer Reviewer Qualifications Statement.

Frequency: Biennially.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden: Responses: 3,500; Burden Hours: 875.

Abstract: In order for OSERS to conduct a peer review of their discretionary grant applications, it must be able to select qualified reviewers. This selection is based on the information from the OSERS Peer Reviewer Qualifications Statement that is entered into the OSERS Peer Review System. The potential peer reviewers come from the rehabilitation and special educational fields.

[FR Doc. 97–8328 Filed 4–1–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 2, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 27, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of the Under Secretary

Type of Review: New.

Title: Followup Study of the Student Support Services Program.

Frequency: One time.

Affected Public: Individuals or households; Business or other for-profit.

Annual Reporting and Recordkeeping Hour Burden: Responses: 9,286; Burden Hours: 2,205.

Abstract: The Planning and Evaluation Service needs to survey participants in the National Study of Student Support Services now, six years after they began postsecondary education, to evaluate the effect of receipt of Student Support Services. Principal outcome measures are persistence, GPA, and graduation. Effects on employment and career plans will also be examined.

[FR Doc. 97–8329 Filed 4–1–97; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.194Q]

Bilingual Education: State Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: This program provides grants to State educational agencies to: (1) assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation; and (2) collect data on the State's limited English proficient (LEP) population and the educational programs and services available to that population. However, a State is exempt from the requirements to collect data if it did not, as of October 20, 1994, have a system in place for collecting that data.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: May 16, 1997.

Deadline for Intergovernmental Review: July 17, 1997.

Applications Available: April 1, 1997.

Available Funds: $300,000.

Estimated Range of Awards: Up to $100,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

SELECTION CRITERIA: In evaluating applications for grants under this program, the Secretary uses the selection criteria included in the application package for new grants under the State Grant Program.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington DC. 20202–6510. Telephone: (202) 205–9907. 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.ED.Gov (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7454.

Dated: March 27, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 97–8417 Filed 4–1–97; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No: 84.265A]

State Vocational Rehabilitation Unit In-Service Training Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: This program is designed to support projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas that will enable personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities. The State Vocational Rehabilitation Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development in section 101(a)(7) of the Rehabilitation Act of 1973, as amended (Act). The program may include training designed (a) to address recruitment and retention of qualified rehabilitation professionals; (b) to provide for leadership development and capacity building; and (c) to provide training on the amendments to the Act made by the Rehabilitation Act Amendments of 1992.

Eligible Applicants: Only State agencies designated under a State plan for vocational rehabilitation services under section 101(a) of the Act are eligible to receive an award under this program.

Deadline for Transmittal of Applications: May 19, 1997.

Deadline for Intergovernmental Review: July 21, 1997.

Applications Available: Applications will be mailed to the director of the Designated State Units of Vocational Rehabilitation on or about April 2, 1997. Extra copies of applications will be available on or about April 2, 1997.

Available Funds: $5,944,350, of which $4,755,480 is available for allocation to designated agencies for basic awards and $1,188,870 is available for allocation to high quality applications (see the ''Priorities'' section of this notice).

Estimated Range of Base Awards: $19,795–$311,000.

Estimated Average Size of Base Awards: $59,000.

Estimated Number of Awards: 81.

Note: The Department is not bound by any estimate in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, and 85; (b) The regulations for this program in 34 CFR Part 388; and (c) §§ 385.4 and 385.40 through 385.46 of 34 CFR Part 385.

Priorities

Under 34 CFR 75.105(c)(3) and § 388.22 the Secretary reserves a portion of the funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in § 388.20. In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and gives an absolute priority preference to applications that meet one or more of the following priorities. The Secretary funds under the quality portion of this program only applications that meet one or more of these absolute priorities:

Absolute Priority 1—Development and Dissemination of Model In-Service Training Materials and Practices

The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

Absolute Priority 2—Distance Education

The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

Absolute Priority 3—Enhanced Employment Outcomes for Specific Populations

The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

For applications: Applications will be mailed to the Director of the Designated State Units of Vocational Rehabilitation on or about April 2, 1997. To request an extra application package, please write the Grants and Contracts Services Team, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317 Switzer Building, Washington, D.C. 20202, or call (202) 205–8351.

For information contact: Ms. Beverly Steburg, U.S. Department of Education, Region IV, 61 Forsyth Street, S.W., Room 18T91, Atlanta, Georgia 30303. Telephone: (404) 562–6336. 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:
29 U.S.C. 770 and 771a.

Dated: March 28, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–8418 Filed 4–1–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/CA(AU)-2 for the transfer of 200.8 kilograms of heavy water, containing approximately 5.5 ci/kilogram tritium, from Australia to Canada as part of the detritiation exchange, will be used by Ontario

Hydro in the operation of the Darlington Nuclear Generating Station.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on March 26, 1997.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–8348 Filed 4–1–97; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/CA(AU)-2 for the transfer of 596.2 kilograms of heavy water, containing approximately 5.5 ci/kilogram tritium, from Australia to Canada as part of the detritiation exchange, will be used by Ontario Hydro in the operation of the Darlington Nuclear Generating Station.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Issued in Washington, DC on March 26, 1997.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–8349 Filed 4–1–97; 8:45 am]

BILLING CODE 6450–01–P

Notice of Intent to Provide Optional Prescreening Process for the National Industrial Competitiveness Through Energy, Environment and Economics (NICE^3) Program

AGENCY: Office of Energy Efficiency and Renewable Energy, The Department of Energy (DOE).

ACTION: Notice of Intent to provide optional prescreening process for potential applicants under the DOE NICE^3 program solicitation.

SUMMARY: The Office of Industrial Technologies of the Department of Energy is funding a State Grant Program entitled National Industrial Competitiveness through Energy, Environment, and Economics (NICE^3). The goals of the NICE^3 Program are to improve energy efficiency, promote cleaner production, and to improve competitiveness in industry.

Background Information

The intent of the NICE^3 program is to fund projects that have completed the research and development stage and are ready to demonstrate a fully integrated commercial unit. Some industrial technologies that the NICE^3 program has funded follow: SO_3 Cleaning Process in the Manufacture of Semiconductors; Innovative Design of a Brick Kiln Using Low Thermal Mass Technology; Continuously Reform Electroless Nickel Plating Solutions; Recovery and Reuse of Water-Washed Overspray Paint; and HCl Acid Recovery System. For the past six years the NICE^3 program has offered 65 grants (approximately $20.5 million) to fund innovative industrial technologies.

Eligible applicants for funding include any authorized agency of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States. For convenience, the term State in this notice refers to all eligible State agency applicants. Local governments, State and private universities, private non-profits, private businesses, and individuals, who are not eligible as direct applicants, must work with the appropriate State agencies in developing projects and forming participation arrangements. DOE strongly encourages and requires these types of cooperative arrangements in support of program goals.

The Catalog of Federal Domestic Assistance number assigned to this program is 81.105. Up to $6 million in Federal funds will be made available in FY 1998 by DOE for the August 1997 solicitation. Cost sharing is required by all applicants and/or cooperating project participants. The Federal Government will provide up to 45 percent of the funds for the project in FY 1998. The remaining funds must be provided by the eligible applicants and/or cooperating project participants. In addition to direct financial contributions, cost sharing can include beneficial services or items, such as manpower equipment, consultants, and computer time that are allowable in accordance with applicable cost principles. The state applicant is required to have an industrial partner to be considered eligible for grant consideration.

Presolicitation

This notice is to advise potential applicants and project participants of the August 1997 solicitation and that DOE will accept presolicitation submissions that set out a brief description of the potential projects. The submissions should not exceed two pages and should adhere to the format laid out in the preproposal format. This format can be obtained by calling the U.S. Department of Energy's Golden Field Office contacts (listed below). All preproposal submissions will be reviewed by NICE^3 project monitors at the Golden Field Office. The monitors will provide comments to the submitter on the proposed project's applicability to the NICE^3 program. In addition, the reviewers will provide feedback which the applicant can use to formulate and refine their proposal.

The submission of a presolicitation description is not mandatory for submitting an application under the August 1997 solicitation. The DOE reviews and comments under the presolicitation process will not be used by DOE in evaluating or awarding applications under the solicitation. The only purpose of the presolicitation process is to assist potential applicants, who may need assistance, in refining their application.

DATES: A brief description of the proposed project can be submitted to the Golden Field Office on or before July 1, 1997. All summaries must be submitted through a state agency.

FOR FURTHER INFORMATION CONTACT: Eric Hass, at (303) 275–4728, or Doug Hooker, at (303) 275–4780, at the U.S. Department of Energy Golden Field Office, 1617 Cole Boulevard, Golden, Colorado 80401, for referral to the appropriate DOE Regional Support Office or State Agency. In addition, information on the NICE^3 program can be located at http//www.oit.doe.gov/

Access/nice[3]. The Contract Specialist is James Damm, at (303) 275–4744.

Issued in Golden, Colorado, on March 21, 1997.

John W. Meeker,

Procurement Manager, GO.

[FR Doc. 97–8351 Filed 4–1–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–81–003]

Carnegie Interstate Pipeline Company; Notice of Tariff Filing

March 27, 1997.

Take notice that on March 24, 1997, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, with an effective date of February 1, 1997:

Substitute Twelfth Revised Sheet No. 7

CIPCO states that the purpose of the filing is to reflect its currently effective Annual Charge Adjustment of $0.0019 per Dth and correct an error made in its filing to implement the settlement approved by the Commission in Docket No. RP96–81, et al.

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 must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8323 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA97–511–000]

Consolidated Edison Company of New York; Notice of Filing

March 27, 1997.

Take notice that on January 28, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an amendment to rate schedule FERC No. 139, an agreement with Orange and Rockland Utilities, Inc. (Orange & Rockland) for the purchase and sale of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon Orange & Rockland.

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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 4, 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. 97–8319 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–293–000]

Florida Gas Transmission Company; Notice of Application for Abandonment by Transfer

March 27, 1997.

Take notice that on March 18, 1997, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas, 77251–1188, filed in Docket No. CP97–293–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) requesting permission and approval to abandon by transfer to Texas Eastern Transmission Corporation (TETCO) certain interconnecting facilities located west of the Atchafalaya River at the interconnection with TETCO's system in St. Landry Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT requests that the Commission issue an order authorizing the abandonment by transfer to TETCO of the 800 feet of 24-inch pipeline (Interconnecting Facilities) connecting FGT's M&R Station to TETCO's facilities. FGT states that the Interconnecting Facilities were authorized in Docket No. CP74–56, and replaced with a higher grade of 24-inch pipe in the Spring of 1996 pursuant to Section 2.55(b) of the Commission's Regulations. FGT also states that it will retain ownership of the M&R Station including the EFM/SCADA equipment, but TETCO will operate the Station along with the remaining facilities necessary to render gas transportation service for both systems. FGT further states that TETCO shall acquire the Interconnecting Facilities under its blanket certificate pursuant to Section 157.208 and shall report the facilities in the required Annual Report after FGT receives Commission authorization to abandon by transfer.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 17, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8316 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–296–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 27, 1997.

Take notice that on March 24, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 1997:

Twentieth Revised Sheet No. 8A
Twelfth Revised Sheet No. 8A.02
Eighteenth Revised Sheet No. 8B
Eleventh Revised sheet No. 8B.01

FGT states that Section 24 of the General Terms and conditions (GTC) of FGT's Tariff sets forth the mechanisms by which FGT is permitted to collect recoverable transition costs. The provisions of Section 24.C.2. and Section 24.D.2 provide that to the extent that in any month the balance of the TCR account and/or 636 Account reaches zero or is a net credit balance, the assessment and crediting of the TCR Reservation Change, the 636 Reservation Charge, and the TCR Usage Surcharge shall cease unless and until the TCR and/or 636 Account again reach a net debit balance.

FGT states that it is filing concurrently herewith a Transition Cost Recovery Report (TCR Report) which reflects the payment by FGT of $1,750,000.00 and $12,159.49 recoverable under FGT's TCR mechanism and Order No. 636 mechanism respectively. The TCR report also reflects that, based upon estimated recoveries, FGT's Order No. 636 Account balance will be fully recovered during March, 1997 and the TCR Account balance will be fully recovered during April, 1997.

Accordingly, FGT states that it is filing herein to suspend its TCR Reservation Charge, 636 Reservation Charge and TCR Usage Surcharge effective May 1, 1997. FGT states that it will make a supplemental filing no later than June 15, 1997 to reflect actual recoveries for the months of March and April, 1997 and to set forth its proposal to refund any overcollections that may occur during April, 1997. Pursuant to the provisions of Section 24, these charges and surcharges will remain suspended unless and until the TCR Account and/or the 636 Account reach a net debit balance.

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, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8325 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–297–000]

Florida Gas Transmission Company; Notice of Transition Cost Recovery Report

March 27, 1997.

Take notice that on March 24, 1997, Florida Gas Transmission Company (FGT) tendered for filing a Transition Cost Recovery Report.

FGT states that Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, sets forth the mechanisms by which FGT is permitted collection of recoverable transition costs. Section 24.B.4 requires the submission of a semiannual report each May 1 and November 1 summarizing the activity which has occurred in FGT's TCR Account and Order 636 Account.

FGT states that on November 1, 1996, in Docket No. RP96–56–000, it filed a transition cost recovery report for the period ended October 31, 1996. Since October 31, 1996, FGT has incurred additional settlement payments of $1,750,000.00 and $12,159.49, recoverable under FGT's TCR mechanism and Order No. 636 mechanism, respectively. At this time, FGT does not anticipate that any further production and/or gas supply settlement payments will be required.

Therefore, FGT respectfully requests waiver of any provisions of its tariff as may be required to file the ''out-of-cycle'' report submitted herein, in lieu of the semiannual report due May 1, 1997.

FGT states that the instant filing summarizes the actual activity that has occurred in FGT's TCR Account and Order 636 Account through February 28, 1997. Actual throughput and recoveries for the months of March and April, 1997 are not known at this time and estimates have been reflected herein for informational purposes. The report attached hereto indicates FGT's Order 636 Account balance will be fully recovered during April, 1997. Accordingly, FGT is filing concurrently herewith to suspend its TCR and 636 Reservation Charges and TCR Usage Surcharge effective May 1, 1997.

FGT further states it will make a supplemental filing no later than June 15, 1997 to reflect actual throughput and recoveries for the months of March and April, 1997 and to set forth its proposal to refund any overcollections that may occur during April, 1997.

FGT states that copies of the report were mailed to all customers serviced under the rate schedules affected by the report and the interested state commission.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 2, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8326 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–102–002]

Mississippi River Transmission Corporation; Notice of Compliance Filing

March 27, 1997.

Take notice that on March 24, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing worksheets, as explained in its filing, which reflect the requirements set forth in the Commission's March 12, 1997 order.

MRT states that a copy of this filing is being mailed to each of MRT'S customers and to the state commissions of Arkansas, Illinois and Missouri.

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 18 CFR 395.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 3, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8324 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–298–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 27, 1977.

Take notice that on March 25, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with a proposed effective date of May 1, 1997.

MRT states that the purpose of this filing is to make corrections, eliminate outdated practices, reformat MRT's forms of service agreement and Master Capacity Release Agreement, and shorten the time in which prospective customers must return executed service agreements.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

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, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8327 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–56–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

March 27, 1997.

Take notice that on March 20, 1997, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Second Revised Volume No. 2, the following tariff sheets:

Sixth Revised Volume No. 1

Second Revised Sheet No. 4A

Second Revised Volume No. 2

Twenty-Eighth Revised Sheet No. 1A
First Revised Sheet No. 996

Natural also requests a waiver of the Commission's regulations to permit the tariff sheets to become effective March 20, 1997, the date of Natural's filing.

Natural states that the purpose of this filing is to cancel Natural's Rate Schedule X–84, a gas transportation agreement between Natural and Koch Gateway Pipeline Company (Koch Gateway), formerly United Gas Pipe Line Company, dated May 24, 1976. Natural further states that these tariff sheets are being submitted in compliance with the Commission order issued on December 23, 1996 in Docket No. CP97–56–000.

Any person desiring to be heard or to make any protest with reference to said filing should on or before April 7, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8315 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA93–45–001]

Northern Border Pipeline Company; Notice of Refund Report

March 27, 1997.

Take notice that on July 12, 1996, Northern Border Pipeline Company (Northern Border) tendered for filing its billing adjustment report pursuant to Section 154.501 of the Commission's Regulations and in accordance with a letter order from the Director, Division of Audits, dated May 176, 1996 in Docket No. FA93–45–000.

Northern Border states that it is also submitting with this billing report a letter to the Office of Chief Accountant containing the required journal entries and supporting documentation. Northern Border states that in addition to item No. 1, the billing adjustment includes $59,473 for items Nos. 3 and 4 of the report.

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 Rules and Regulations. All such protests must be filed on or before April 3, 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.

Louis D. Cashell,

Secretary.

[FR Doc. 97–8320 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–296–000]

Southern Natural Gas Company; Notice of Application for Abandonment

March 27, 1997.

Take notice that on March 20, 1997, Southern Natural Gas Company (Southern), AmSouth-Sonat Tower, 1900 Fifth Avenue North, Birmingham, Alabama 35203 filed, in Docket No. CP97–296–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for permission and approval to abandon by sale to Shoreham Pipeline Company (Shoreham), certain pipeline segments and receiving stations located in Iberia Parish and St. Martin Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern relates that it seeks to abandon approximately 20 miles of pipeline in Louisiana. As described in its application, Southern wants to abandon certain portions of its 10-inch Loisel Field Line in Iberia and St. Martin Parishes, Louisiana, and portions of its 4-inch Loisel Field McCarter Line and its 8-inch Iberia Field Line in Iberia Parish, Louisiana. Southern also requests permission to abandon five receiving stations in Iberia Parish, Louisiana: The Loisel Field McCarter Receiving Station, the Loisel Field Emerald Oil Receiving Station, the Iberia Field Receiving Station, the Fausse Point-Cities Service Receiving Station, and the Fausse Point-Sun Gas Company Receiving Station.

Southern explains that it is no longer economical for it to maintain the facilities in view of the minimal gas production that is received by the facilities for transportation; the sale of the facilities will lower Southern's long-term costs by reducing its operating and maintenance costs, fuel and gas loss, and capital expenditures for upgrading of lines and receiving stations; and all of Southern's gas purchase contracts in the Iberia and Loisel Fields have terminated. Southern says that Shoreham wants to purchase the facilities to connect new sources of supply to its pipeline system and will, upon purchase, connect the facilities to an existing Shoreham pipeline in the area of the facilities and will disconnect the facilities from Southern's system.

Southern indicates that Shoreham will pay a purchase price of $50,000 for the facilities. Southern states that the proposed abandonment by sale to Shoreham will not affect the capacity of Southern's pipeline system. Southern relates that Acadiana Gas Systems, Inc., who owns and operates production facilities connected to the Fausse Point-Sun Gas Company Receiving Station, is the only producer on the facilities Southern proposes to abandon. Southern asserts that, after the abandonment, this producer may continue to flow gas volumes from its production facilities by accessing Shoreham's pipeline system.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 17, 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 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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 and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and 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, or 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 Southern to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8317 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–137–044]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

March 27, 1997.

Take notice that on March 24, 1997 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission its proposal to comply with the January 23, 1997 ''Order on Remand'' regarding interruptible transportation revenue credits.

As background to the instant filing, on May 3, 1993, Transco filed a settlement of its Section 4 rate case in Docket Nos. RP97–137 *et al.* (Agreement). The Agreement included, among other things, a mechanism to credit 90% of excess interruptible transportation revenue to firm shippers, GSS customers and interruptible shippers paying maximum rates. On November 4, 1993 (November 4 Order) the Commission modified and approved the Agreement such that the excess interruptible transportation revenue was to be refunded only to firm customers. In compliance with the November 4 Order, on May 31, 1994, Transco refunded approximately $17.8 million, including interest, to its firm customers (Excess IT Refund).

Various parties appealed the November 4 Order's exclusion of interruptible shippers from participation in the Excess IT Refund. Subsequently, the United States Court of Appeals granted the Commission's motion for a voluntary remand of this issue. The January 23 Order rescinded the Commission's prior modification of the Agreement and approved the Agreement's provisions concerning interruptible transportation credits. Transco was directed to make a filing, within 60 days of the January 23 Order (i.e., on or before March 24, 1997), to implement the Commission's decision.

Transco states that the instant filing is to submit a plan to restore parties to the position they would have been in if this legal error had not occurred.

Transco states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties in Docket No. RP92–137.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 3, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8322 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–2003–000]

WWP Resource Services, Inc.; Notice of Filing

March 27, 1997.

Take notice that on February 26, 1997, WWP Resource Services, Inc., notified the Commission of a change in its name from WWP Resource Services, Inc. to Avista Energy, Inc. WWP Resource Services, Inc. filed amended Articles of Incorporation with the Washington Secretary of State on February 14, 1997 and indicates that future filings with the Commission, consistent with the change

of a name, will be made under the new name Avista Energy, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protect 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 Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 7, 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. 97–8318 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1545–009, et al.]

Calpine Power Services Company, et al.; Electric Rate and Corporate Regulation Filings

March 26, 1997.

Take notice that the following filings have been made with the Commission:

1. Calpine Power Services Company, Federal Energy Sales, Inc. Quantum Energy Resources, Inc., Edison Source, Symmetry Device Research, Inc., Dayton Power & Light Company, Russell Energy Sales Company

[Docket Nos. ER94–1545–009, ER96–918–004, ER96–947–004, ER96–2150–004, ER96–2524–001, ER96–2601–002, and ER96–2882–001, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 31, 1997, Calpine Power Services Company filed certain information as required by the Commission's March 9, 1995, order in Docket No. ER95–1545–000.

On March 13, 1997, Federal Energy Sales, Inc. filed certain information as required by the Commission's March 1, 1996, order in Docket No. ER96–918–000.

On January 27, 1997, Quantum Energy Resources, Inc. filed certain information as required by the Commission's March 5, 1996, order in Docket No. ER96–947–000.

On January 30, 1997, Edison Source filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2150–000.

On March 3, 1997, Symmetry Device Research, Inc. filed certain information as required by the Commission's August 22, 1996, order in Docket No. ER96–2524–000.

On February 28, 1997, Dayton Power & Light Company filed certain information as required by the Commission's September 30, 1996, order in Docket No. ER96–2601–000.

On March 19, 1997, Russell Energy Services Company filed certain information as required by the Commission's October 30, 1996, order in Docket No. ER96–2882–000.

2. Arizona Public Service Company

[Docket No. ER96–2999–001]

Take notice that on February 14, 1997, Arizona Public Service Company (APS), tendered for filing an amendment to the above referenced docket numbers.

A copy of this filing has been served on all parties on the official service list.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–1771–000]

Take notice that on February 19, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for AIG Trading Corporation, the Transmission Customer. The Companies request an effective date of January 28, 1997.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation

[Docket No. ER97–1852–000]

Take notice that on February 26, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (''OVEC'') tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated February 10, 1997 (the ''Service Agreement'') between Wisconsin Electric Power Company (Wisconsin Electric) and OVEC. OVEC proposes an effective date of February 10, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Wisconsin Electric.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000) .

Copies of this filing were served upon the Michigan Public Service Commission the Wisconsin Public Service Commission and Wisconsin Electric.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER97–2012–000]

Take notice that on March 7, 1997, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements for service under the terms of PNM's Open Access Transmission Tariff with the following customers: Questar Energy Trading Company (2 agreements) and Delhi Energy Services, Inc. (2 agreements). PNM's filing also is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER97–2069–000]

Take notice that on March 12, 1997, Minnesota Power & Light Company tendered for filing signed Service Agreements with the following:

Aquila Power Corporation, Duke/Louis Dreyfus LLC, Entergy, National Gas & Electric L.P., North Central Power Co., Inc., Northern Indiana Public Service Company, Northwestern Wisconsin Electric Company, Ohio Edison Company, The Power Company of America, Upper Peninsula Power Company, Vitol Gas & Electric LLC, Western Resources Inc., under its cost-based Wholesale coordination Sales Tariff WCS–1 to satisfy its filing requirements under this tariff.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER97–2070–000]

Take notice that on March 12, 1997, Northeast Utilities Service Company (''NUSCO''), tendered for filing, a Service Agreement with Central Vermont Public Service Corp. (''CVPS'') under the NU System Companies' System Power Sales/Exchange Tariff No.

6. Service is limited to sales of system power to CVPS.

NUSCO states that a copy of this filing has been mailed to CVPS.

NUSCO requests that the Service Agreement become effective March 1, 1997.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation

[Docket No. ER97–2071–000]

Take notice that on March 12, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated March 10, 1997 (the Service Agreement) between Southern Energy Trading and Marketing, Inc. (Southern Energy) and OVEC. OVEC proposes an effective date of March 10, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Southern Energy.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon the Alabama Public Service Commission, the Florida Public Service Commission, the Georgia Public Service Commission, the Mississippi Public Service Commission and Southern Energy.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER97–2072–000]

Take notice that on March 12, 1997, Florida Power Corporation (''FPC''), tendered for filing a contract for the provision of interchange service between itself and Coral Power, L.L.C. (''CORAL''). The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on March 12, 1997. Waiver is consistent with Commission policies because it will allow voluntary economic transactions to go forward.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–2073–000]

Take notice that on March 12, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with American Energy Solutions TM, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. The Detroit Edison Company

[Docket No. ER97–2074–000]

Take notice that on March 12, 1997, The Detroit Edison Company (''Detroit Edison''), tendered for filing a Service Agreement for wholesale power sale transactions (the ''Service Agreement'') under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 1 (the ''WPS–1 Tariff''), between Detroit Edison and Wolverine Power Supply Cooperative, dated as of February 24, 1997. Detroit Edison requests that the Service Agreement be made effective as of March 1, 1997.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Company

[Docket No. ER97–2075–000]

Take notice that on March 12, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc. as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc. and the Public Utilities Commission of Ohio.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. The Dayton Power and Light Company

[Docket No. ER97–2076–000]

Take notice that on March 12, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing WPS Energy Services, Inc., Western Power Services, Inc., and American Electric Power Service Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon WPS Energy Services, Inc., Western Power Services, Inc., and American Electric Power Service Corporation, and the Public Utilities Commission of Ohio.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER97–2077–000]

Take notice that on March 13, 1997, Arizona Public Service Company (''APS''), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Public Service Company of Colorado (''Colorado'').

A copy of this filing has been served on Colorado, the Public Utilities Commission of the State of Colorado and the Arizona Corporation Commission.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER97–2078–000]

Take notice that on March 13, 1997, Duquesne Light Company (''DLC''), filed a Service Agreement dated March 7, 1997 with Coastal Electric Services Company under DLC's Open Access Transmission Tariff (''Tariff''). The Service Agreement adds Coastal Electric Services Company as a customer under the Tariff. DLC requests an effective date of March 7, 1997 for the Service Agreement.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER97–2079–000]

Take notice that on March 12, 1997, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the ''CSW Operating Companies''), submitted for filing service agreements under which the CSW Operating Companies will provide

transmission service to Morgan Stanley Capital Group, Inc. and Illinois Power Company in accordance with the CSW Operating Companies' open access transmission service tariff. The CSW Operating Companies request that the agreements be accepted to become effective on March 13, 1997.

The CSW Operating Companies state that a copy of this filing has been served on Morgan Stanley Capital Group, Inc. and Illinois Power Company.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER97–2080–000]

Take notice that on March 13, 1997, Arizona Public Service Company tendered for filing a Notice of Cancellation of the Wholesale Power Agreement between APS and the Bureau of Indiana Affairs, Colorado River Agency.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER97–2081–000]

Take notice that on March 13, 1997, Arizona Public Service Company (''APS''), tendered for filing a revised Contract Demand Exhibit for the Bureau of Indian Affairs (''BIA'') on behalf of the San Carlos Irrigation Project applicable under the FERC Rate Schedule No. 201.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the BIA and the Arizona Corporation Commission.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER97–2082–000]

Take notice that on March 12, 1997, Niagara Mohawk Power Corporation (''NMPC''), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Central Maine Power. This Transmission Service Agreement specifies that Central Maine Power has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Central Maine Power to enter into separately scheduled transactions under which NMPC will provide transmission service for Central Maine Power as the parties may mutually agree.

NMPC requests an effective date of March 4, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Central Maine Power.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Virginia Electric and Power Company

[Docket No. ER97–2083–000]

Take notice that on March 13, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement between Virginia Electric and Power Company and NIPSCO Energy Services Company under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to NIPSCO Energy Services Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER97–2084–000]

Take notice that on March 13, 1997, Niagara Mohawk Power Corporation (''NMPC''), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Orange and Rockland Utilities, Inc. This Transmission Service Agreement specifies that Orange and Rockland Utilities, Inc. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Orange and Rockland Utilities, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Orange and Rockland Utilities, Inc. as the parties may mutually agree.

NMPC requests an effective date of March 7, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Orange and Rockland Utilities, Inc.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Corporation

[Docket No. ER97–2085–000]

Take notice that Niagara Mohawk Corporation on March 13, 1997 tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 140 between Niagara Mohawk and Orange and Rockland Utilities, Inc.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Union Electric Company

[Docket No. ER97–2086–000]

Take notice that on March 13, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and Cleco Merchant Energy Services, CNG Power Services Corporation, NorAm Energy Services, Inc., Southern Company Services and WPS Energy Services. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Central Illinois Light Company

[Docket No. ER97–2087–000]

Take notice that on March 14, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreements for one new customer.

CILCO requested an effective date of March 13, 1997.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Tucson Electric Power Company

[Docket No. ER97–2088–000]

Take notice that on March 14, 1997, Tucson Electric Power Company, tendered for filing a service agreement with PacifiCorp for non-firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreement to become effective as of February 21, 1997. TEP has served a copy of this filing on PacifiCorp.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Southern California Edison Company

[Docket No. ER97–2089–000]

Take notice that on March 14, 1997, Southern California Edison Company (Edison), tendered for filing Service Agreements (Service Agreements) with the City of Vernon for Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888.

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of March 15, 1997 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Midwest Energy, Inc.

[Docket No. ER97–2090–000]

Take Notice that on March 11, 1997, Midwest Energy, Inc. (''Midwest''), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and Minnesota Power and Light Company.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Midwest Energy, Inc.

[Docket No. ER97–2091–000]

Take Notice that on March 11, 1997, Midwest Energy, Inc. (''Midwest''), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and Midwest Energy, Inc.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Midwest Energy, Inc.

[Docket No. ER97–2092–000]

Take Notice that on March 11, 1997, Midwest Energy, Inc. (''Midwest''), tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-Firm Point-to-Point Transmission Service entered into between Midwest and Enron Power Marketing, Inc.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. PacifiCorp

[Docket No. ER97–2093–000]

Take notice that on March 14, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the Restated Transmission Service Agreement (''Restated Agreement'') between PacifiCorp and Arizona Public Service Company (''Arizona'') dated April 5, 1995.

Copies of this filing were supplied to Arizona, the Public Utility Commission of Oregon, Public Service Commission of Utah, and the Washington Utilities and Transportation Commission.

PacifiCorp requests the an effective date of May 15, 1997 be assigned to the Agreement.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Central Illinois Public Service Company

[Docket No. ER97–2094–000]

Take notice that on March 14, 1997, Central Illinois Public Service Company (''CIPS''), submitted Service Agreements establishing CMS Marketing, Services and Trading and NIPSCO Energy Services, Inc. as new customers under the terms of CIPS' Coordination Sales Tariff CST–1 (''CST–1 Tariff'').

CIPS requests an effective date of March 4, 1997, for the two service agreements with new customers and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the two customers and the Illinois Commerce Commission.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Duke Power Company

[Docket No. ER97–2096–000]

Take notice that on March 14, 1997, Duke Power Company (''Duke''), tendered for filing a Market Rate Service Agreement between Duke and Electric Clearinghouse, Inc. dated as of February 13, 1997. Duke requests that the Agreement be made effective as of February 13, 1997.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Midwest Energy, Inc.

[Docket No. ER97–2097–000]

Take notice that on March 14, 1997, Midwest Energy, Inc. tendered for filing with the Federal Energy Regulatory Commission the Service Agreement for Non-firm Point-to-Point Transmission Service entered into between Midwest and Southern Energy Trading and Marketing, Inc.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Keyspan Energy Services, Inc.

[Docket No. ER97–2122–000]

Take notice that on March 17, 1997, Keyspan Energy Services, Inc. (''Keyspan'') tendered for filing a notice of cancellation of Keyspan's Rate Schedule FERC No. 1 to be effective immediately.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Duke Power Company

[Docket No. ER97–2213–000 and SC97–6–000]

Take notice that on March 21, 1997, Duke Power Company (''Duke'') tendered for filing to the Federal Energy Regulatory Commission (''FERC'' or ''Commission'') an application to amend the Electric Power Contract between Duke and the Commissioners of Public Works of the City of Greenwood, South Carolina (''Greenwood'') dated September 18, 1970 (FERC Rate Schedule No. 250), to include a stranded cost provision.

In accordance with section 205 of the Federal Power Act, 16 U.S.C. 824d (1994), Order No. 888, *Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, FERC Stats. & Regs. [Regulations Preambles 1991–96] ¶ 31,036 (1996), and section 35.26(c)(1)(v)(A) of the Commission's Regulations, Recovery of Stranded Costs by Public Utilities, 61 Fed. Reg. 21,692 (1996) (to be codified at 18 CFR 35.26), Duke's proposed amendment provides for Duke's recovery, through an exit fee, of costs that will be stranded as a result of Greenwood's departure, on June 6, 1997, as a wholesale requirements customer of Duke.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. OA97–319–000]

Take notice that on March 19, 1997, GPU Service, Inc., on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, filed an amendment to its December 31, 1996 filing in this docket.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Kentucky Utilities Company

[Docket No. FA96–4–002]

Take notice that on February 21, 1997, Kentucky Utilities Company tendered for filing its refund report in the above-referenced docket.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Colorado Springs Utilities

[Docket No. NJ97–9–000]

Take notice that on March 18, 1997, Colorado Springs Utilities (CSU) tendered for filing a Petition for a Nonjurisdictional Declaratory Order in the above-referenced docket. CSU requests that the Commission issue an order finding that its Open Access Transmission Tariff is an acceptable reciprocity tariff, that its Standards of Conduct comply with Order 889, and thus that CSU satisfies the reciprocity provisions of Order 888.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Central Illinois Light Co. and QST Energy Trading Inc.

[Docket No. OA97–451–000]

Take notice that on February 26, 1997, QST Energy Trading Inc. (QST Trading) and Central Illinois Light Co. made a revised filing of their Standards of Conduct as required by Order No. 889.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8354 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG97–43–000, et al.]

ESI Doswell Power Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 25, 1997.

Take notice that the following filings have been made with the Commission:

1. ESI Doswell Power Services, Inc.

[Docket No. EG97–43–000]

On March 13, 1997, ESI Doswell Power Services, Inc. (Applicant), with its principal office at 11760 U.S. Highway One, Suite 600, North Palm Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Applicant states that it will operate the 665 MW gas-fired Doswell combined cycle power plant located in Hanover County, Virginia.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. TermoEmcali I. S.C.A. E.S.P.

[Docket No. EG97–44–000]

On March 18, 1997, TermoEmcali I S.C.A. E.S.P. (TermoEmcali), with its address c/o International Generating Company, Inc., One Bowdoin Square, Boston, MA 02114, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

TermoEmcali is a Colombian company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities to be located in Colombia. The eligible facilities will consist of an approximately 233 MW gas fired electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. JMC Cauca Valley, Inc.

[Docket No. EG97–45–000]

On March 18, 1997, JMC Cauca Valley, Inc. (JMCV), with its address c/o International Generating Company, Inc., One Bowdoin Square, Boston, MA 02114, filed with the Federal Energy Regulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

JMCV is a Cayman Islands company that will be engaged directly and indirectly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities to be located in Colombia. The eligible facilities will consist of an approximately 233 MW gas fired electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Power Authority of the State of New York

[Docket No. EL97–29–000]

Take notice that on March 7, 1997, the Power Authority of the State of New York (NYPA) tendered for filing a Complaint, Motion for Summary Disposition and a Motion to Shorten the Time for Response by Niagara Mohawk Power Corporation to Complaint against Niagara Mohawk Power Corporation (Niagara Mohawk). In its filings, NYPA requests that Niagara Mohawk be required to provide transmission service to NYPA's high load factor manufacturing customers pursuant to FERC Rate Schedule No. 95, and further that Niagara Mohawk not be permitted to engage in anti-competitive practices against NYPA.

NYPA states that a copy of this filing has been mailed to Niagara Mohawk.

Comment date: April 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER97–2046–000]

Take notice that on March 11, 1997, Commonwealth Edison Company (ComEd), submitted for filing Service Agreements, establishing Michigan Public Power Agency (MPPA), American Energy Solutions, Inc. (AESI), and Upper Peninsula Power (UPP), as customers under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of February 9, 1997, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon MPPA, AESI, UPP, and the Illinois Commerce Commission.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER97–2047–000]

Take notice that on March 11, 1997, Commonwealth Edison Company (ComEd), submitted for filing Service Agreements for various firm transactions establishing with Wisconsin Electric Power Company (WEPCO), and Commonwealth Edison Company, in its wholesale merchant function (ComEd WMD), and a Non-Firm Service Agreement with American Energy Solutions, Inc. (AESI), as transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests various effective dates, corresponding to the date each service agreement was entered into, and accordingly seeks waiver of the Commission's Requirements. Copies of this filing were served upon WEPCO, ComEd WMD, AESI, and the Illinois Commerce Commission.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2048–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and NorAm Energy Services, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2049–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and The Power Company of America, L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2050–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and PanEnergy Trading and Marketing Services, L.L.C. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2051–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and TransCanada Energy Ltd. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day

notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2052–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Federal Energy Sales, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2053–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Plum Street Energy Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2054–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Long Island Lighting Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2055–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and CNG Power Services Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2056–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Engelhard Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2057–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Coastal Electric Services Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2058–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Coastal Electric Services Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2059–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and LG&E Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2060–000]

Take notice that on March 12, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Duke/Louis Dreyfus L.L.C. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Detroit Edison Company

[Docket No. ER97–2061–000]

Take notice that on March 12, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for Network Integration Transmission Service and Non-Firm Point-to-Point Transmission Service (the Service Agreements) between Detroit Edison Transmission Operations and Detroit Edison Merchant Operations under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison. Each of the Service Agreements are dated as of February 28, 1997. Detroit Edison requests that the Service Agreement be made effective as of March 1, 1997.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–2062–000]

Take notice that on March 12, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Ohio Edison, the Transmission Customer. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreement is January 28, 1997.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER97–2063–000]

Take notice that on March 12, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Tariff (the Tariff) entered into between Cinergy and WPS Energy, Inc. (WPS) and an index of customers. Cinergy will provide non-firm transmission service pursuant to the rates, terms and conditions of its Tariff. Cinergy is requesting an effective date of March 1, 1997.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. ER97–2064–000]

Take notice that on March 12, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement and confirmation letter under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Illinois Power Company.

Cinergy and Illinois Power Company are requesting an effective date of February 15, 1997.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. ER97–2065–000]

Take notice that on March 12, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated March 1, 1997 between Cinergy, CG&E, PSI and EnerZ Corporation (EnerZ).

The Interchange Agreement provides for the following service between Cinergy and EnerZ.

1. Exhibit A—Power Sales by EnerZ.
2. Exhibit B—Power Sales by Cinergy.

Cinergy and EnerZ have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on EnerZ Corporation, the New York Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER97–2066–000]

Take notice that on March 12, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement and confirmation letter under Cinergy's Non-firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and South Carolina Electric & Gas Company.

Cinergy and South Carolina Electric & Gas Company are requesting an effective date of February 15, 1997.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Southern Company Services, Inc.

[Docket No. ER97–2068–000]

Take notice that on March 12, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed two (2) agreements between SCS, as agent for Southern Companies, and Entergy Power, Inc. relating to the provision of firm point-to-point transmission service under Part II of the Open Access Transmission Tariff of Southern Companies.

Comment date: April 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8355 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11588 Alaska]

Alaska Power and Telephone Company [Otter Creek Hydroelectric Project]; Notice of Intent To Conduct Environmental Scoping Meetings and a Site Visit

March 27, 1997.

The Energy Policy Act of 1992 allows applicants to prepare their own environmental assessment (EA) for hydropower projects and file it with the Federal Energy Regulatory Commission (Commission) along with their license application as part of the ''applicant-prepared EA'' process. Alaska Power and Telephone Company (AP&T) intends to prepare an EA to file with the Commission for the proposed Otter Creek Hydroelectric Project, No. 11588. AP&T will hold two scoping meetings, pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of issues that should be analyzed in the EA.

Scoping Meetings

The times and locations of the two scoping meetings are:

Public meeting	Agency meeting
Date: Tuesday, May 6, 1997.	Date: Thursday, May 8, 1997.
Place: National Park Service, Auditorium, Second Avenue, Skagway, Alaska.	Place: U.S. Forest Service, Juneau Ranger District, Confer. Room, Main Building, 8465 Old Dairy Road, Juneau, Alaska.
Time: 7:00 P.M	Time: 10:00 A.M.

At the scoping meetings, AP&T will: (1) Summarize the tentative environmental issues and concerns on the project, (2) outline those preliminary resources that they believe would not require a detailed analysis, (3) identify reasonable alternatives to be addressed in the EA, (4) solicit from the meeting participants all available baseline information, especially quantitative data, on the resource issues, and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including views supporting or opposing AP&T's preliminary views.

All interested individuals, organizations, and agencies are invited and encouraged to attend either or both meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, AP&T will prepare and distribute to the participants prior to the meetings, the Initial Consultation Package and Scoping Document 1 for this project. Copies of this scoping document can be obtained by calling Mr. Glen Martin of AP&T at (360) 385–1733, or can be obtained directly at either meeting.

Site Visit

For those who intend to participate in scoping, AP&T will also conduct a site visit to the proposed Otter Creek Project on Tuesday, May 6, 1997. Those attending must meet at the AP&T offices in Skagway, Alaska, 5th and Spring Street by 7:30 AM. We will promptly leave for the project site, via helicopter. Because of the remoteness and difficulty of ground access at the proposed project site, those attending the site visit should be physically fit and must wear appropriate clothing and footgear. Those being shuttled by helicopter to the project site may need to sign a waiver of liability regarding helicopter use.

To plan on helicopter use in advance of the visit, AP&T must identify the number of individuals interested in the site visit. Therefore, if you intend on visiting the proposed project site, you must first register with Mr. Stan Selmer of AP&T in Skagway at (907) 983–2202 no later than April 18, 1997. If inclement weather prevents a site visit on May 6th, the alternate date will be May 7th at the same time.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission will not conduct a NEPA scoping meeting after the application and draft EA are filed with the Commission.

Both scoping meetings will be recorded by a stenographer, and thus will become a part of the formal record of the proceedings for this project.

Those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments should be mailed to: Mr. Glen Martin, Alaska Power and Telephone Company, P.O. Box 222, Port Townsend, Washington 98368. All correspondence should show the following caption on the first page:

Scoping Comments, Otter Creek Hydroelectric Project, Project No. 11588, Alaska

For further information, please contact Mr. Glen Martin at (360) 385–1733 or Mr. Carl Keller of the Commission at (202) 219–2831.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8321 Filed 4–1–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5805–6]

Air Pollution Control; Proposed Actions on Clean Air Act Grants to the Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination under section 105(c) of the Clean Air Act (CAA) that a reduction in expenditures of non-Federal funds for the Monterey Bay Unified County Air Pollution Control District (MBUAPCD, or ''District'') in Monterey, California is the result of a non-selective reduction in expenditures. This determination, when final, will permit the MBUAPCD to keep the financial assistance awarded to it by

EPA for FY–96 under section 105(c) of the CAA.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by May 2, 1997.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1250.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance (grants) to the MBUAPCD to aid in the operation of its air pollution control programs. In FY–95 EPA awarded the MBUAPCD $292,856, which represented approximately 8% of the District's budget. In FY–96, EPA awarded the MBUAPCD $272,869, which represented approximately 7% of the District's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–96 section 105 application, which EPA reviewed in early 1996, the MBUAPCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $2,873,212. This MOE would have been sufficient to meet the MOE requirements of the CAA because it was not lower than the FY–95 MOE of $2,828,502. In November of 1996, however, the MBUAPCD submitted to EPA documentation which shows that its actual FY–96 MOE was $2,701,629. This amount represents a shortfall of $126,873 from the MOE for FY–95. In order for the District to be eligible to keep its FY–96 grant, EPA must make a determination under § 105(c)(2).

The MBUAPCD is a single-purpose agency whose primary source of funding is permit fee revenue. Fees associated with permits issued by the MBUAPCD go directly to the district to fund its operations. It is the ''unit of Government'' for section 105(c)(2) purposes. The MBUAPCD submitted documentation to EPA which shows that in 1995 and 1996 air permit fee revenues decreased because of declining economic conditions which caused the business community to curtail operations, resulting in fewer permits issued and fees collected. As a result, the MBUAPCD's overall budget and its MOE decreased. The MBUAPCD also submitted documentation to EPA which shows that over the past four years the District instituted a number of cost cutting measures, including reductions in hiring, equipment purchases, and contract costs.

In summary, the MBUAPCD's MOE reductions resulted from budget cuts stemming from a loss of fee revenues due to circumstances beyond the District's control. EPA proposes to determine that the MBUAPCD's lower FY–96 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 C.F.R. 35.210, this determination will allow the MBUAPCD to keep the funds received from EPA for FY–96.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by May 2, 1997 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by May 2, 1997.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Sara Bartholomew at the above address.

Dated: March 19, 1997.

Amy Zimpfer,

Acting Director, Air Division, U.S. EPA, Region 9.

[FR Doc. 97–8381 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5805–6]

Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) has cancelled the Storm Water Phase II Advisory Subcommittee meeting scheduled for April 17–18, 1997 at the Omni Inner Harbor Hotel, Baltimore, Maryland. This meeting was listed in the **Federal Register** of February 10, 1997.

The next public meeting for the Storm Water Phase II Advisory Subcommittee is June 12–13, 1997 at the Doubletree Hotel Park Terrace in Washington, DC. Details for this meeting are in the **Federal Register** of February 10, 1997.

FOR FURTHER INFORMATION: Contact Sharie Centilla, Office of Wastewater Mangement, at (202) 260–6052 or Internet: centilla.sharie@epamail.epa.gov

Dated: March 26, 1997.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 97–8382 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30351B; FRL–5597–4]

Rohm and Haas Company; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Rohm and Haas Co., to conditionally register the pesticide products Thiazopyr Technical Herbicide and Visor 2E Herbicide containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: JoAnne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–7830; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published the **Federal Register** of June 10, 1993 (58 FR 32533; FRL–4582–6), which announced that Monsanto Company, Suite 1100, 700 14th St., NW, Washington, DC 20005, had submitted applications to register the pesticide products MON 13211-A Citrus Herbicide and Thiazopyr Technical (MON 13200) (EPA File Symbols 524–UAG and 524–UAE), containing the active ingredient Thiazopyr [3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(methylpropyl)-6-(trifluoromethyl)-methyl ester at 22.3 and 93 percent respectively, an active ingredient not included in any previously registered products.

These applications to register these products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended were transferred to Rohm and Haas Company on January 31, 1995. The chemical was revised to reflect Chemical Abstract nomenclature.

The applications were approved on February 20, 1997, as Thiazopyr Technical Herbicide and Visor 2E Herbicide to control annual grasses and broadleaf weeds in grapefruit and oranges (EPA Registration Numbers 707–250 and 707–251 respectively).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of thiazopyr, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of thiazopyr during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). The the conditions must comply with all the terms as stated in the correspondence dated February 18, 1997 from Rohm and Haas Co. concerning additional data requirements for thiazopyr. These conditions must be fulfilled by February 20, 2001. Rohm and Haas will submit the following Environmental Fate and Ecotox data:

1. Aerobic aquatic metabolism study.
2. Available water balance data to further assess field dissipation studies. This would include pan evaporation data, daily rainfall, and irrigation data. Additional dissipation studies may be required if after further review current dissipation studies are found unacceptable.
3. Aquatic plant study.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on thiazopyr.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 21, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–8386 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30393A; FRL–5595–7]

Zeneca Ag Products; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Zeneca Ag Products, to conditionally register the pesticide product Heritage Fungicide containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–7740; e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of September 13, 1995 (60 FR 47575; FRL–4972–1), which announced that Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19897, had submitted an application to register the pesticide product ICIA5504 50WG (EPA File Symbol 10182–UNI),

containing the active ingredient (methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate at 50 percent, an active ingredient not included in any previously registered product.

The application was approved on February 7, 1997, as Heritage Fungicide for use to control certain diseases on commercial turf (EPA Registration Number 10182–408).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of Azoxystrobin (methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of Azoxystrobin (methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

This product is conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on Azoxystrobin (methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 24, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–8385 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–725; FRL–5594–8]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket control number PF–725, must be received on or before May 2, 1997.

ADDRESSES: By mail submit written comments to: Public Response and Program Resources Branch, Field Operations Divison (7505C), Office of Pesticides 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 following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

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: Linda Hollis, Product Manager (PM) 90, Biopesticides and Pollution Prevention Division, (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5th floor, CS1, 2800 Crystal Drive, Arlington, VA. 22202, (703) 308–8733; e-mail: hollis.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–725 (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 official record is located at the address in ''ADDRESSES'' at the beginning of this document.

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. Comment 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 (PF–725) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

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

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AgriPhi Inc.

OPP–300357

EPA issued a notice OPP–300357, (FRL–4906–6), which was published in the **Federal Register** of September 7, 1994 (59 FR 46247–46248), announcing the establishment of a temporary tolerance exemption for residues of the microbial pesticide *bacteriophages* isolated from *Xanthomonas campestris* subsp. *vesicatoria* in or on the raw agricultural commodities, tomatoes and peppers. EPA has received a pesticide petition from AgriPhi Inc., which proposes, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), as recently amended by the Food Quality Protection Act, 21 U.S.C. section 346a, to amend 40 CFR part 180 to reestablish a temporary exemption from the requirement of a tolerance for residues of the plant pesticide *Xanthomonas campestris pv. vesicatoria* in or on the raw agricultural commodities, tomatoes and peppers.

A. Proposed Use Practices

Recommended application method and rate(s), frequency of application, and timing of application. AgriPhi Inc., proposes to conduct testing of 120 gallons of *bacteriophages* isolated from *Xanthomonas campestris* pv. *vesicatoria* in Brandenton Florida and Ruskin Florida. Total acreage for both sites will occupy 25 acres. Tests will be designed to evaluate the effectiveness of the active ingredient for use in controlling bacterial diseases of tomatoes and peppers conducted all year long (as needed) for two years. Growing plants of tomato and pepper and/or the soil around the growing plants will be treated with *bacteriophages* as a drench, spray or through chemigation at a concentration of approximately 10 —8 pfu per ml. Plants will be given multiple treatments at preplant and postmergence. Upon termination of the tests the bactericide and container will be boiled for 10 minutes and disposed of in accordance with local state and federal regulations.

B. Product Identity/Chemistry

The product is a colorless to light brown liquid with no to slight odor. The liquid is non-corrosive and stable in aqueous solutions (pH 5 to 9) but denature by organic solvents. The liquid has a density of 1.06 g/cc and is stored stably for >1 year @ 4 degrees C but can be degraded in four days if maintained at room temperature.

1. *Identity of the pesticide and corresponding residues.* AgriPhi Inc., believes that no pesticide residues are expected.

2. *Magnititude of residue anticipated at the time of harvest and method used to dermine the residue.* AgriPhi Inc., believes that little concern exists for any residues of phages as they are ubiquitous in nature, found in soil, water, raw produce, oysters and cheese. Data from the published scientific literature indicates that bacteriophages are harmless to mammals, fish and wildlife. Additionally, bacteriophages are completely biodegradable and so pose not threat to the environment.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* AgriPhi Inc., states that phage residue at any level will pose no threat to human health or the environment, therefore an analytical method for detecting and measuring residue levels is not needed.

C. Mammalian Toxicological Profile

AgriPhi Inc., requested data waivers for Acute Toxicity/Pathogenicity, Genotoxicity, Reproductive and Developmental Toxicity, Subchronic Toxicity and Chronic Toxicity Studies. These data waivers are supported by data from the published scientific literature which indicates that *bacteriophages* are specific for their bacterial host and present no unique toxicity hazards to humans, fish and wildlife or to the environment. In addition to the phages effectiveness against there has been no evidence to suggest non-selective infection. Phages have been documented as being active against bacteria of many human diseases. Daily exposure of phages are evident in the human consumption of raw produce, cheeses and water without any adverse health effects. AgriPhi Inc., believes that inasmuch as each phage is specific for its target bacterial plant pathogen, they are nontoxic for growers who would be applying page mixtures to seed, soil or crops.

D. Aggregate Exposure

1. *Dietary exposure. a. Food.* AgriPhi Inc., states that humans are exposed daily to phages in the consumption of raw produce and cheeses without any adverse effects or detriment to the human intestinal microflora.

b. Drinking water. AgriPhi Inc., states that phages are naturally occurring in waters and that there have been no reports of adverse effects to humans exposed to municipal waters.

2. *Non-dietary exposure (lawn care, topical insect repellents, etc.).* AgriPhi Inc., states that the use for this pesticide is agricultural, therefore, non-dietary exposure pesticide will be minimal to non-existent.

E. Cumulative Exposure

Exposure through other pesticides and substances with the common mode of toxicity as this pesticide. AgriPhi, Inc., states that *bacteriophages* are nontoxic to humans, fish and wildlife, therefore, cumulative effects with other pesticides and substances will be minimal to non-existent.

F. Safety Determination

1. *U.S. population.* AgriPhi Inc., states that phages are naturally occurring entities found in soil, water and some foods. AgriPhi Inc., believes that because phages present no unique toxicity hazard to humans, safety factors are not appropriate. Phages have been

active in the treatment of bacterial human diseases and have been consumed by humans without any detectable or detrimental adverse human health effects. Therefore, AgriPhi Inc., believes that there is reasonable certainty that no harm will result to the U.S. population in general from consumption of a bacteriophage.

2. *Infants and children.* AgriPhi Inc., states that data from the published scientific literature reports that bacteriophages have been used as a prophylactic treatment for children without any harmful effects. Bacteriophages found in foods are not likely to occur in different amounts in foods consumed by children and infants. Therefore, AgriPhi Inc., concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate esposure to residues of bacteriophages.

G. Existing Tolerances

A temporary tolerance was granted for this pesticide in August 1994 and expired in August 1996.

H. International Tolerance

No known international tolerances have been granted for this pesticide. Therefore, based on the completeness and reliability of the toxicity data from the published literature and the conservative exposure assessment, AgriPhi Inc., concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of the pesticide *Bacteriophages* of *Xanthomonas campestris pv. vesicatoria* including all anticipated dietary exposure and all other non-occupational exposures.

2. Asgrow Seed Company

PP 6E4670

EPA has received a pesticide petition (PP) 6E4670 from Asgrow Seed Company. The petition proposes, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-pesticide Coat Protein of Cucumber Mosaic Virus and the genetic materail necessary for its production in or on all raw agricultural commodities.

A. Proposed Use Practices

Recommended application method and rate(s), frequency of application, and timing of application. Asgrow states that the plant viral coat protein is produced within tissues of the engineered plant and is not to be applied externally. Appropriate cultural practices for growing seed with genetically engineered virus resistance will be determined by individual growers, as such practices are for all other plant varieties. Accordingly, no special instructions for use will be necessary.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Asgrow has determined that the sequence of the engineered viral coat protein expressed in transformed plants is identical to a viral coat protein found in nature.

2. *Magnitude of residue anticipated at the time of harvest and method used to determine the residue.* Asgrow states that the viral coat protein is expressed in plant tissues, and therefore, is not a residue in the same manner as a pesticide applied externally to growing crop plants. Asgrow does not expect any measurable residue of the engineered viral coat protein to remain on or in transformed raw agricultural commodities (RACs).

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* The ELISA (Enzyme-Linked Immunoabsorbent Assay) test can be used to determine expression levels of viral coat proteins in transformed plants, fruits and leaves. However, because the Agency proposes to exempt all plant virus coat proteins from the requirement of a tolerance, Asgrow believes that an analytical method for detecting and measuring the levels of viral coat proteins in or on all RACs is not required for enforcement purposes.

C. Mammalian Toxicological Profile

Viral Coat Proteins are substances that viruses produce during a plant infection to encapsulate and protect their genetic material. When the genetic material encoding the coat proeitn for a plant virus is introduced into a plant's genome, the plant is able to resist subsequent infections by that same virus as will as strains closely related to the donor virus. Virus-infected plants currently are and ahve always been a part of both the human and domestic animal food supply, and Asgrow agrees with EPA's finding that plant viruses are not known to be harmful to humans (59 FR 60519-60535, November 23, 1994). All available data from the scientific literature indicates that plant viruses are not toxic to humans or other vertebrates. Additionally, plant viruses are unable to replicate in mammals or other veterbrates, eliminating the possibility of human infection. This has been shown by injections of purified whole virus into laboratory animals to develop antibodies for ELISA tests.

More importantly, however, this tolerance exemption will apply to that portion of the viral genome coding for the whole coat protein and any subcomponent of the coat protein expressed in the plant. This component alone is incapable of forming infectious particles. Because whole intact plant viruses are not known to cause deleterious human health effects, Asgrow believes that it is reasonable to assume that a subunit of these viruses likewise will not cause adverse human health effects.

D. Aggregate Exposure

1. *Dietary exposure.* *a. Food.* Asgrow believes that the use of viral coat protein-mediated resistance will not result in any new dietary exposure to plant viruses. Entire infectious particles of Cucumber Mosaic Virus, including the coat protein component, are found in the fruit, leaves and stems of most plants. Virus-infected food plants are and have always been a part of the human and domestic animal food supply. Such food plants and food derived from them have been concumed with no detectable or observed adverse effects to human health, including children and infants. Given this information, Asgrow believes that exposure via the human diet provides a direct and better method of establishing the lack of toxicity versus animal models of toxicity.

b. Drinking water. No measurable residues of coat proteins from engineered plant viruses are expected to be in the drinking water. Plant viruses are a natural component of the environment and are present in soil and water. Consequently, Asgrow believes that coat proteins produced as plant-pesticides would represent a negligible addition to those existing in drinking water.

2. *Non-dietary exposure.* Asgrow believes that non-dietary exposure to engineered coat proteins will be minimal to non-existent because the coat protein is expressed only within the plant tissues.

E. Cumulative Exposure

Exposure through other pesticides and substances with the common mode of toxicity as this pesticide. Asgrow believes that due to the lack of toxicity/pathogenicity associated with plant viruses or plant viral coat proteins, cumulative effects with other pesticides and substances will be non-existent.

F. Safety Determination

1. *U.S. population.* There is no known toxicity associated with coat proteins from plant viruses. Consequently, a safety assessment is not needed for these proteins. Given the long history of mammalian consumption of the entire plant virus particle in foods, without any adverse human health effects, Asgrow reasonable believes that consumption of a noninfectious component of the CMV plant virus is safe. There are no known data that indicate aggregate exposure to plant viral coat proteins under normal conditions will result in harm to any person.

2. *Infants and children.* Viral coat proteins are ubiquitious in foods, including those foods consumed by infants and children. Moreover, there is no reason to believe that plant viral coat proteins are likely to occur in different amounts in foods, consumed by children and infants. Further, there is no scientific evidence that viral coat proteins used as plant-pesticides would have a different effect on children that on adults. Viral coat proteins are not toxic and, therefore, Asgrow believes with reasonable certainty that no harm will result to infants and children from aggregate exposure to coat proteins from plant viruses.

G. Existing Tolerances

No tolerance or exemption from tolerance has been previously granted for CMV coat protein.

H. International Tolerance

No international tolerance or exemption from tolerance has been previously granted for CMV coat protein. Asgrow Seed Company concludes that plant viruses, including CMV coat proteins, are not harmful to humans, and that there is a reasonable certainty that no harm will result from aggregate exposure to Coat Protein of Cucumber Mosaic Virus and the genetic material necessary for its production, including all anticipated dietary exposures and all other non-occupational exposures. Accordingly, Asgrow believes that the CMV coat protein qualifies for an exemption from the requirement of a tolerance in or on all raw agricultural commodities.

3. Cornell University

PP 7F4813

EPA has received a pesticide petition (PP) 7F4813 from Cornell University. The petition proposes, pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-pesticide Coat Protein of Papaya Ringspot Virus and the genetic material necessary for its production in or on all raw agricultural commodities.

A. Proposed Use Practices

Recommended application method and rate(s), frequency of application, and timing of application. Cornell University states that because the inserted genes are under the control of a constitutive promoter, the coat proteins will be continuously produced by the plant and not applied externally. In information accompanying the seeds that are sold or provided to commercial growers, the resistance of the resulting plants to Papaya ringspot Virus will be described. However, no special instructions for use will be necessary. Appropriate cultural practices will be determined by individual growers, as they are for all other plant varieties.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Cornell University states that the pesticide is a chimeric virus coat protein that is produced by the transgenic papaya. The coat protein that is produced consist of 16 amino acids from the cucumber mosaic virus coat protein and the coat protein of papaya ringspot virus which consist of 289 amino acids. The molecular weight of the chimeric coat protein is 34,511.

2. *Magnitude of residue anticipated at the time of harvest and method used to determine the residue.* Cornell University states that the viral coat protein is expressed in plant tissues, and therefore, is not a residue in the same manner as a pesticide applied externally to growing crop plants. Cornell University does not expect any measurable residue of the engineered viral coat protein to remain on or in transformed raw agricultural commodities (RACs).

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* The ELISA (Enzyme-Linked Immunoabsorbent Assay) test can be used to determine expression levels of viral coat proteins in transformed plants, fruits and leaves. However, because the Agency proposes to exempt all plant virus coat proteins from the requirement of a tolerance, Cornell University believes that an analytical method for detecting and measuring the levels of viral coat proteins in or on all RACs is not required for enforcement purposes.

C. Mammalian Toxicological Profile

Viral Coat Proteins are substances that viruses produce during a plant infection to encapsulate and protect their genetic material. When the genetic material encoding the coat protein for a plant virus is introduced into a plant's genome, the plant is able to resist subsequent infections by that same virus as will as strains closely related to the donor virus. Virus-infected plants currently are and have always been a part of both the human and domestic animal food supply, and Cornell University agrees with EPA's finding that plant viruses are not known to be harmful to humans (59 FR 60519–60535, November 23, 1994). All available data from the scientific literature indicates that plant viruses are not toxic to humans or other vertebrates. Additionally, plant viruses are unable to replicate in mammals or other veterbrates, eliminating the possibility of human infection. This has been shown by injections of purified whole virus into laboratory animals to develop antibodies for ELISA tests.

More importantly, however, this tolerance exemption will apply to that portion of the viral genome coding for the whole coat protein and any subcomponent of the coat protein expressed in the plant. This component alone is incapable of forming infectious particles. Because whole intact plant viruses are not known to cause deleterious human health effects, Cornell University believes that it is reasonable to assume that a subunit of these viruses likewise will not cause adverse human health effects.

D. Aggregate Exposure

1. *Dietary exposure.* *a. Food.* Cornell University believes that the use of viral coat protein-mediated resistance will not result in any new dietary exposure to plant viruses. Entire infectious particles of Papaya Ringspot Virus, including the coat protein component, are found in the fruit, leaves and stems of most plants. Virus-infected food plants are and have always been a part of the human and domestic animal food supply. Such food plants and food derived from them have been consumed with no detectable or observed adverse effects to human health, including children and infants. Given this information, Cornell Unversity believes that exposure via the human diet provides a direct and better method of establishing the lack of toxicity versus animal models of toxicity.

b. Drinking water. No measurable residues of coat proteins from engineered plant viruses are expected to

be in the drinking water. Plant viruses are a natural component of the environment and are present in soil and water. Consequently, Cornell University believes that coat proteins produced as plant-pesticides would represent a negligible addition to those existing in drinking water.

2. *Non-dietary exposure.* Cornell University believes that non-dietary exposure to engineered coat proteins will be minimal to non-existent because the coat protein is expressed only within the plant tissues.

E. Cumulative Exposure

Exposure through other pesticides and substances with the common mode of toxicity as this pesticide. Cornell University believes that due to the lack of toxicity/pathogenicity associated with plant viruses or plant viral coat proteins, cumulative effects with other pesticides and substances will be non-existent.

F. Safety Determination

1. *U.S. population.* There is no known toxicity associated with coat proteins from plant viruses. Consequently, a safety assessment is not needed for these proteins. Given the long history of mammalian consumption of the entire plant virus particle in foods, without any adverse human health effects, Cornell University reasonably believes that consumption of a noninfectious component of the PRV plant virus is safe. There are no known data that indicate aggregate exposure to plant viral coat proteins under normal conditions will result in harm to any person.

2. *Infants and children.* Viral coat proteins are ubiquitious in foods, including those foods consumed by infants and children. Moreover, there is not reason to believe that plant viral coat proteins are likely to occur in different amounts in foods, consumed by children and infants. Further, there is no scientific evidence that viral coat proteins used as plant-pesticides would have a different effect on children that on adults. Viral coat proteins are not toxic and, therefore, Cornell University believes with reasonable certainty that no harm will result to infants and children from aggregate exposure to coat proteins from plant viruses.

G. Existing Tolerances

No tolerance or exemption from tolerance has been previously granted for PRV coat protein.

H. International Tolerance

International tolerance levels for Papaya Ringspot Virus Coat Protein have not been determined. However, papaya fruit from trees infected with papaya ringspot virus are consumed by numerous people throughout the world.

Cornell University concludes that plant viruses, including PRV coat proteins, are not harmful to humans, and that there is a reasonable certainty that no harm will result from aggregate exposure to Coat Protein of Papaya Ringspot Virus and the genetic material necessary for its production, including all anticipated dietary exposures and all other non-occupational exposures. Accordingly, Cornell University believes that the PRV coat protein qualifies for an exemption from the requirement of a tolerance in or on all raw agricultural commodities.

[FR Doc. 97–8396 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–723; FRL–5593–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket control number PF–723, must be received on or before May 2, 1997.

ADDRESSES: By mail submit written comments to: Public Response and Program Resources Branch, Field Operations Divison (7505C), Office of Pesticides 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 following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

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: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Connie Welch (PM 21) ..	Rm. 227, CM #2, 703–305–6226, e-mail:welch.connie@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 229, CM #2, 703–305–5540, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number PF–723 (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 official

record is located at the address in ''ADDRESSES'' at the beginning of this document.

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. Comment 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 (insert docket number) and appropriate petition number. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Bayer's Corporation

PP 6F4631

EPA has received a pesticide petition (PP 6F4631) from Bayer Corporation, 8400 Hawthorne Road, Kansas City, MO 64120–0013, 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 tolerances for residues of the herbicide, FOE 5043, *N*-(4-Fluorophenyl)-*N*-(1-methylethyl)-2[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide in or on the raw agricultural commodities, field corn grain at 0.05 parts per million (ppm), field corn forage at 0.4 ppm, field corn stover (fodder) at 0.4 ppm, soybean seed at 0.1 ppm, milk at 0.01 ppm, meat at 0.05 ppm, and meat byproducts at 0.05 ppm. The proposed analytical method is gas chromatography/mass spectrometry with selected ion monitoring. (PM 22)

1. *Chemical uses.* FOE 5043 use on field corn and soybeans provides selective weed control for a wide spectrum of annual grasses and small-seeded broadleaf weeds, with exceptional strength on barnyard grass, large crabgrass, fall panicum and foxtail species. Application technique: Products containing FOE 5043 can be applied preplant surface, preplant incorporated, or preemergence for control of emerging weeds. Applications can be made up to 45 days before planting. Applications may be made using standard low pressure ground herbicide boom sprayers equipped with suitable nozzles and screens. The products containing FOE 5043 may be applied either as a single or a split application. Application rates range from 0.442 to 0.884 pounds active ingredient (a.i.) of FOE 5043 per acre depending on the soil texture and soil organic matter content. Tank mix combinations with selected products may provide additional weed control.

2. *FOE 5043 Safety.* Bayer has submitted over 65 separate toxicology studies in support of tolerances for FOE 5043. Among the submissions, a finding of particular interest was the observation that in the long-term data compiled for FOE 5043, provided no indications of a potential to induce either carcinogenic or reproductive signs of toxicity. In addition, developmental no-observed-adverse effects levels (NOAELs) of 25 milligrams body weight per day (mg/kg bwt/day) were established for both the rat and rabbit.

The following mammalian toxicity studies have been conducted to support the tolerance of AXIOM DF (contains FOE 5043 and metribuzin):

i. A rat acute oral study with an LD_{50} of 2,347 mg/kg (male) and 2,027 mg/kg (female).

ii. A rabbit acute dermal with an LD_{50} of > 2,000 mg/kg.

iii. A rat acute inhalation with an LD_{50} of > 977 mg/m^3.

iv. A primary eye irritation study in the rabbit which showed mild irritation.

v. A primary dermal irritation study which showed no irritation.

vi. A primary dermal sensitization study which showed no sensitization.

The following mammalian toxicity studies, derived from exposure to the technical form of the chemical, have been conducted to support the tolerance of FOE 5043:

i. A rat acute oral study with an LD_{50} of 1,617 mg/kg (male) and 589 mg/kg (female).

ii. A rat acute dermal LD_{50} of 2,000 mg/kg bwt.

iii. A rat acute inhalation LC_{50} of 3,740 mg/m^3 (male and female).

iv. A primary eye irritation study in the rabbit which showed no irritation.

v. A primary dermal irritation study which showed no irritation.

vi. A primary dermal sensitization study which showed no sensitization.

vii. An acute neurotoxicity study with a no-observed effect level (NOEL) for FOB, motor and locomotor activity of 75 mg/kg bwt/day for males and females.

viii. A 90–day feeding study in the rat with a NOEL of 1.7 mg/kg bwt/day.

ix. A 90–day subchronic neurotoxicity study in the rat with a neurotoxicity and overall NOEL of 120 ppm.

x. A 24–months chronic feeding/oncogenicity study in the rat with an overall NOEL of 1.2 mg/kg bwt/day in males and females based on liver, kidney, hematologic and thyroid effects. There was no evidence of an oncogenic response.

xi. A 90–day feeding study in dogs with a NOEL of 50 ppm, based on liver hematology, and thyroid effects.

xii. A 12–month feeding study in dogs with a NOEL of 40 ppm, based on hematology and thyroid effects.

xiii. A mouse oncogenicity study which provided no evidence of oncogenicity.

xiv. An oral teratology study in the rat with maternal and developmental NOAELs of 25 mg/kg bwt/day.

xv. An oral teratology study in the rabbit with maternal and fetal NOELs of 5 and 25 mg/kg bwt/day respectively.

xvi. An two-generation reproduction study in the rat with a NOEL for reproductive and parental toxicity of 500 and 20 ppm, respectively.

xvii. Ames assay: Negative

xviii. Unscheduled DNA synthesis: Negative

xix. Mouse Micronucleus Assay: Negative.

3. *Threshold effects— chronic effects.* Based on the available chronic toxicity data, Bayer believes the Reference Dose (RfD) for FOE 5043 should be 0.0114 mg/kg/day. The RfD for FOE 5043 is based on a 1 year chronic toxicity study in the dog with a threshold No Observed Effect Level (NOEL) of 1.14 mg/kg/day and an uncertainty factor of 100.

Acute toxicity. EPA recently proposed a tiered approach to estimate acute dietary exposure. The methods proposed by the EPA were reviewed and supported by the FIFRA Scientific Advisory Panel (SAP, 1995). EPA's Tier 1 method is based on the assumption that residue concentrations do not vary. The analysis assumes that all residues have the same magnitude, typically the highest field trial residue or tolerance value. This value is assumed for all

points along the consumption distribution, resulting in a distribution of dietary exposure.

For the acute analysis for FOE 5043, a Tier 1 analysis was conducted for the overall U.S. population, infants, children 1 to 6 years of age, females 13 years and older, and males 13 years and older. Using the NOEL of 138 mg/kg derived from the acute oral toxicity study in rats, the following margins of exposure were calculated (margins of exposure of 100 or more are considered satisfactory):

Population Group	Margin of Exposure
U.S. Population-All Seasons.	94,741
Infants	64,986
Children 1 to 6	76,494
Women 13 to 50 years old	191,418
Men 13 years and older	109,805

4. *Non-threshold Effects—carcinogenicity.* Using the Guidelines for Carcinogen Risk Assessment, Bayer believes FOE 5043 to be in Group E for carcinogenicity—no evidence of carcinogenicity—based on the results of carcinogenicity studies in three species. There was no evidence of carcinogenicity in an 18–month feeding study in mice, a 2–year feeding study in rats, or a 1–year feeding study in dogs at the dose levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment should not be necessary for FOE 5043.

5. *Aggregate Exposure.* For purposes of assessing the potential dietary exposure under the proposed tolerances for FOE 5043, the estimated aggregate exposure was based on the Theoretical Maximum Residue Concentrations (TMRC) and the proposed tolerances (The TMRC is a worst case estimate of dietary exposure since it is assumed that 100 % of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels.). Registration for FOE 5043 and AXIOM are currently being sought on field corn and soybeans. FOE 5043 and AXIOM are not registered for any uses. Tolerances are proposed (pesticide petition number 6F 4631) for FOE 5043 on the following Raw Agricultural Commodities (RAC); field corn grain (0.05 ppm), forage (0.4 ppm) and stover (fodder) (0.4 ppm), soybean seed (0.1 ppm), milk (0.01 ppm), meat (0.05 ppm), and meat byproducts (0.05 ppm). The TMRC is obtained by multiplying the tolerance level for these commodities by consumption data which estimates the amounts of corn and soybean products eaten by various human population subgroups. Tolerances are proposed for milk, meat and meat byproducts because residues for FOE 5043 can be transferred from corn and soybean based feeds through livestock to humans.

This dietary exposure estimate assumes that 100% of these crops are treated with FOE 5043 and that the residues of FOE 5043 found in these crops would occur at the proposed tolerance levels. These assumptions result in an overestimate of exposure. In making a safety determination for these tolerances this conservative exposure estimate has been taken into account.

Other potential sources of exposure of the general population to residues of FOE 5043 are residues in drinking water and exposure from non-occupational sources. In ongoing ground water monitoring studies, trace levels of FOE 5043 residues (less that 1 part per billion (ppb) total residues) have been detected in ground water. These studies are being performed at sites with vulnerable shallow aquifers and large amounts of irrigation are being applied monthly. The highest residue level detected is well below the anticipated life-time Health Advisory Level of 84 ppb. If residues of FOE 5043 do occur in ground water used for drinking water they will be far below the level which causes concern. Based on the available data, no significant residues of FOE 5043 are anticipated to occur in surface water used for drinking water. Since registration is not being sought for any residential or homeowner uses no other potential for exposure to FOE 5043 residues exists.

The toxicological profile for FOE 5043 is fundamentally characterized by structural- and functional-related alterations in thyroid, hematologic and hepatic parameters. These sort of changes are not uncommon among herbicides. Since residues of FOE 5043 and its degradates will occur in raw agricultural commodities and processed foods in the high parts per billion or low parts per million range there is no compelling evidence that suggests a cumulative effect (i.e., potentiated, additive, or synergistic response) might occur or be anticipated in the human following exposure to multiple chemical agents with similar toxicological profiles and/or mechanisms of toxicity.

6. *Determination of safety for U.S. population—Reference dose (RfD).* Using the conservative exposure assumptions described above, based on the completeness and reliability of the toxicity data, the aggregate exposure to FOE 5043 will utilize 2.1% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 % of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of FOE 5043, including all anticipated dietary exposure and all other non-occupational exposures.

7. *Determination of Safety for Infants and Children.* The possibility of FOE 5043 induced developmental toxicity was suggested in preliminary and non-definitive toxicity studies using rats (> 175 mg/kg bwt/day) and rabbits (> 125 mg/kg bwt/day). However NOAELs for developmental effects were ultimately established in the definitive studies. Those values, as mentioned previously, were 25 mg/kg bwt/day in the rat and 25 mg/kg bwt/day in the rabbit.

Reference Dose (RfD). Using the conservative exposure assumptions described previously, Bayer has concluded that the percent of the RfD utilized by aggregate exposure to residues of FOE 5043 ranges from 1.1 % for non-nursing infants, up to 5.2 % for children 1 to 6 years old. EPA generally has no concern for exposure below 100 % of the Reference Dose. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Bayer concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of FOE 5043, including all anticipated dietary exposure and all other non-occupational exposures.

8. *Estrogenic Effects.* No specific tests have been conducted with FOE 5043 to determine whether the pesticide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

9. *Chemical Residue.* The qualitative nature of the residues in plants and animals is adequately understood for the purposes of registration. Residues of FOE 5043 do concentrate slightly (1.6x) in the processed commodity of corn grits. No tolerance has been proposed for residue of FOE 5043 in corn grits because anticipated residues are less than two times the limit of quantitation for the analytical method. There are no Codex maximum residue levels established for residues of FOE 5043 on any crop. Bayer has submitted a practical analytical method for detecting and measuring levels of FOE 5043 in or on food with a limit of detection that allows monitoring of food with residues at or above the proposed tolerance levels. EPA will provide information on

this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from the EPA's Field Operations Division, Office of Pesticide Programs.

Fifty-five separate residue trials have been conducted with FOE 5043 on corn and soybeans. Analysis of these trials shows that the maximum total combined residue for FOE 5043 and its major metabolites in any commodity will be at/below 9.75 ppm. Residues occurred at this level in soybean dry hay. However, no tolerances have been proposed for residues of FOE 5043 on soybean hay because the proposed labels for products containing FOE 5043 do not allow livestock to be fed with FOE 5043 treated soybean hay.

Tolerances have been requested for residues of FOE 5043 and its major metabolites on field corn grain (0.05 ppm), forage (0.4 ppm) and stover (fodder) (0.4 ppm) and soybean seed (0.1 ppm), milk (0.01 ppm), meat (0.05 ppm), and meat byproducts (0.05 ppm).

The proposed tolerance levels are adequate to cover residues likely to be present from the proposed use of FOE 5043. Therefore, no special processing to reduce the residues will be necessary.

There is no need for tolerances in poultry or eggs since there is no reasonable expectation of residues in these materials based on the results of poultry metabolism studies, as well as the corn and soybean metabolism and rotational crop studies. Calculated transfer factors are extremely low and maximum expected residues in poultry and eggs would be in the low parts per billion or high parts per trillion range. The anticipated residues in poultry tissues and eggs resulting from feeding poultry FOE 5043 treated corn and or soybeans would be far below the limit of quantitation of the analytical residue method.

No FOE 5043 food additive tolerances are proposed for field corn starch (wet milling), field corn refined oil (wet milling), field corn flour (dry milling) and field corn refined oil (dry milling) because no residues were detected above the limit of quantitation in this processed commodity.

Additionally, no FOE 5043 food additive tolerances are proposed in field corn grits (dry milling) field corn meal (dry milling), soybean meal, soybean hulls, and soybean refined oil because the measured concentration, when adjusted for the exaggerated application rate, was less that two times the limit of quantitation.

No feed additive tolerances are proposed for FOE 5043 in the aspirated grain fractions of corn and soybeans. With pre-plant and or pre-emergent modes of application for AXIOM DF and FOE 5043 DF, no residues were expected on the seed surface in the corn and soybean magnitude of residue studies. Therefore, no aspirated grain fractions were collected for analysis. A tolerance has not been proposed for soybean forage because feeding soybean hay and forage (silage) to livestock animals is not permitted by the proposed label.

Also, no feed additive tolerances are proposed for soybean meal or hulls since the measured concentration in the soybean processing study for these feeds, when adjusted for the exaggerated application rate, was less that two times the limit of quantitation.

No tolerances are proposed for corn milled by-products. Table II (September 1995) advises use residue data for corn dry-milled processed commodities having the highest residues, excluding oils. No residues were detected in the dry-milled processed commodities above the limit of quantitation.

10. *Environmental Fate.* Laboratory studies indicate that FOE 5043 residue has the potential to be moderately mobile in soil. However the results of field dissipation studies performed in Wisconsin and North Carolina, both corn and/or soybean producing states, indicate that downward movement of FOE 5043 residue is limited, with no quantifiable residues being found below 18 inches. These studies were conducted under conditions conducive to downward movement of FOE 5043 and degradates (very high sand content, low organic matter, and large volumes of applied irrigation).

FOE 5043 has been found to be stable to chemical hydrolysis in the pH range of environmental concern. The compound is also stable in water and soil when exposed to artificial sunlight.

Microbial degradation is the principal means of dissipation in soil. Half-lives for aerobic microbial degradation range from 10 to 34 days in varying soil types at the anticipated field application rate. Degradation of FOE 5043 in soil under aerobic conditions occurs by cleavage of the thiadiazole ring to form 3-trifluoromethyl-1,3,4-thiadiazol-2(3H)one (FOE thiadone) and the corresponding alcohol, *N*-(4-flurophenyl)-2-hydroxy-*N*-(1-methylethyl)acetamide. The FOE thiadone is further metabolized to CO2, and the alcohol is subsequently oxidized to [4-flurophenyl)(1-methylethyl)amino]oxoacetic acid. Another major degradation product of FOE 5043 is 4-fluoro-*N*-methylethylaniline-sulfoacetamide which is proposed to form through the oxidation of a cysteine conjugate intermediate. (PM 22)

PP 5F4577

EPA has received a pesticide petition (PP) 5F4577 from Bayer Corporation, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013 proposing, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR 180.474 by establishing tolerances for residues of the fungicide tebuconazole in or on the raw agricultural commodities grass forage at 8.0 ppm and grass hay at 25.0 ppm and tolerances for residues of the fungicide tebuconazole in or on the raw agricultural commodities cattle liver at 0.2 ppm, cattle kidney at 0.2 ppm, cattle meat byproducts at 0.2 ppm, and milk at 0.1 ppm. The proposed analytical method for determining residues uses gas-liquid chromatography coupled with a thermionic detector. 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. (PM 21)

Tebuconazole is a sterol demethylation inhibitor (DMI) fungicide. It is systemic and shows activity against rusts (Puccinia spp.) and powdery mildew infecting grasses grown for seed. Tebuconazole provides protective activity by preventing completion of the infection process. It is rapidly absorbed by plants and is translocated systemically in the young growing tissues.

A. Residue Chemistry

1. *Plant and livestock metabolism.* Bayer believes the nature of the residue in plants and animals is adequately understood. The residue of concern is the parent compound only, as specified in 40 CFR 180.474.

2. *Analytical method.* Bayer has submitted an enforcement method for plant commodities has been validated on various commodities. It has undergone successful EPA validation and has been submitted for inclusion in PAM II. The method should be adequate for grasses grown for seed. The animal method has also been approved as an adequate enforcement method and will be submitted to FDA for inclusion in PAM II.

3. *Magnitude of residue.* Nine separate residue trials have been conducted and submitted to the EPA with tebuconazole on grasses grown for seed. The EPA has

determined that these data show that residues of tebuconazole,α-[2-(4-Chlorophenyl)ethyl]-α-(1,1-dimethylethyl)-*H*-1,2,4-triazole-1-eth anol, are not expected to exceed 8 ppm in grass forage and 25 ppm in grass hay as a result of the proposed use. In addition, the EPA has determined that tolerances are needed for the following animal commodities: cattle liver, kidney and meat byproducts at 0.2 ppm and milk at 0.1 ppm. The tolerance expression for the animal commodities will include the HWG 2061 metabolite,α-[2-(4-Chlorophenyl)-ethyl]-α-[(2-hydroxy-1,1-dimethyl)ethyl]-1*H*-1,2,4triazole-1-ethanol, in addition to the parent.

No processed commodities are associated with the proposed use on grasses grown for seed. In addition, due to the nature of the crop, rotational crops will not be an issue.

B. Toxicological Profile of Tebuconazole

1. *Acute toxicity.* i. Rat acute oral study with an LD_{50} of > 5,000 mg/kg (male) and 3,933 mg/kg (female)

ii. Rabbit acute dermal of LD_{50} of > 5,000 mg/kg

iii. Rat acute inhalation of LC_{50} of > 0.371 mg/l

iv. Primary eye irritation study in the rabbit which showed mild irritation reversible by day 7

v. Primary dermal irritation study which showed no skin irritation

vi. Primary dermal sensitization study which showed no sensitization

2. *Genotoxicity.* i. An Ames mutagenesis study in Salmonella showed no mutagenicity with or without metabolic activation.

ii. A micronucleus mutagenesis assay study in mice showed no genotoxicity.

iii. A sister chromatid exchange mutagenesis study using CHO cells was negative at dose levels 4 to 30 µg/mL without activation or 15 to 120 µg/mL with activation.

iv. An unscheduled DNA synthesis (UDS) study was negative for UDS in rat hepatocytes.

3. *Reproductive and developmental toxicity.* i. A rat oral developmental toxicity study with a maternal NOEL of 30 milligrams per kilogram of body weight per day (mg/kg bwtt/day) and an LEL of 60 mg/kg bwtt/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bwtt/day and an LEL of 60 mg/kg bwtt/day was determined, based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

ii. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bwt/day and an LEL of 100 mg/kg bwt/day based on depression of body weight gains and food consumption. A developmental NOEL of 30 mg/kg bwt/day and an LEL of 100 mg/kg bwt/day were based on increased post-implantation losses, from both early and late resorptions and frank malformations in eight fetuses of five litters.

iii. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bwt/day and an LEL of 20 mg/kg bwt/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver. A developmental NOEL of 10 mg/kg bwt/day and an LEL of 30 mg/kg bwt/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bwt/day.

iv. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bwt/day and an LEL of 60 mg/kg bwt/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver. The NOEL for developmental toxicity in the dermal study in the mouse is 1,000 mg/kg bwt/day, the highest dose tested (HDT).

v. A two-generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bwt/day (300 ppm) and an LEL of 50 mg/kg bwt/day (1,000 ppm) based on depressed body weights, increased spleen hemosiderosis, and decreased liver and kidney weights. A reproductive NOEL of 15 mg/kg bwt/day (300 ppm) and an LEL of 50 mg/kg bwt/day (1,000 ppm) were based on neonatal birth weight depression.

4. *Subchronic toxicity.* i. 28-day feeding study in the rat with a NOEL of 30 mg/kg/day and a LEL of 100 mg/kg/day based on changes in hematology and clinical chemistry parameters.

ii. A 90–day rat feeding study with a no-observed-effect level (NOEL) of 34.8 (mg/kg bwt/day) (400 ppm) and a lowest-effect-level (LEL) of 171.7 mg/kg bwt/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bwt/day (100 ppm) and the LEL was 46.5 mg/kg bwt/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

iii. A 90–day dog-feeding study with a NOEL of 200 ppm (73.7 mg/kg bwt/day in males and 73.4 mg/kg bwt/day in females) and an LEL of 1,000 ppm (368.3 mg/kg bwt/day in males and 351.8 mg/kg bwt/day in females). The LEL was based on decreases in mean body weights, body weight gains, and food consumption, and an increase in liver *N*-demethylase activity.

5. *Chronic toxicity* i. A 2–year rat chronic feeding study defined a NOEL of 7.4 mg/kg bwt/day (100 ppm) and an LEL of 22.8 mg/kg bwt/day (300 ppm) based on body weight depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, and 1,000 ppm).

ii. A 1–year dog feeding study with a NOEL of 1 mg/kg bwt/day (40 ppm) and an LEL of 5 mg/kg bwt/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1–year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

iii. A mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the maximum-tolerated-dose (MTD) was not reached in this study, the study was classified as supplementary. A follow-up mouse study at higher doses (0, 500, and 1,500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and follow-up studies, together with supplementary data were classified as core minimum.

6. *Animal metabolism.* A general rat metabolism study at dietary levels of 2 and 20 mg/kg showed rapid elimination from the rat in 3 days (some 99% excreted by the feces and urine and 0.0304% in expired air). Increased concentrations of radioactivity from the active ingredient and metabolites were found only in the liver. The bones and the brain were among the tissues showing the least amount of radioactivity.

7. *Metabolite toxicity.* The residue of concern in plants is the parent compound, tebuconazole, only. For animal commodities, the EPA has determined that the tolerance expression should include the HWG 2061 metabolite, α-[2-(4 -Chlorophenyl)-ethyl]-α-[(2-hydroxy-1,1-dimethyl)ethyl]-1*H*-1,2,4triazole-1-ethanol. An acute oral toxicity study has been submitted to the EPA on this metabolite. This study shows an oral LD50 of > 5,000 for female rats. This value indicates that the HWG 2061 metabolite is relatively innocuous and less acutely toxic than tebuconazole.

8. *Endocrine effects.* No special studies investigating potential estrogenic or endocrine effects of tebuconazole have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects but no such effects were noted in any of the studies with either tebuconazole or its metabolites.

9. *Carcinogenicity.* EPA's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's ''Guidelines for Carcinogen Risk Assessment'' published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. The decision supporting classification of tebuconazole as a possible human carcinogen (Group C) was primarily based on the statistically significant increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes of NMRI mice both by positive trend and pairwise comparison at the highest dose tested.

C. Aggregate Exposure

1. *Dietary (food) exposure.* For purposes of assessing the potential dietary exposure from food under the proposed tolerances, Bayer has been advised that the EPA has estimated exposure based on the Theoretical Maximum Residue Contribution (TMRC) derived from the previously established tolerances for tebuconazole on cherries, peaches, bananas, barley, oats, wheat, and peanuts as well as the proposed tolerances for tebuconazole on milk at 0.1 ppm and cattle liver, kidney and meat byproducts at 0.2 ppm. The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data which estimate the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups. In conducting this exposure assessment, the EPA has made very conservative assumptions—100% of all commodities will contain tebuconazole residues, and those residues would be at the level of the tolerance—which result in a large overestimate of human exposure. Thus, in making a safety determination for these tolerances, the Agency took into account this very conservative exposure assessment.

2. *Dietary (drinking water) exposure.* There is no Maximum Contaminant Level established for residues of tebuconazole. Bayer was advised by the Environmental Fate and Ground Water Branch's (EFGWB) May 26, 1993 memorandum for our application for use on bananas and peanuts that all environmental fate data requirements for tebuconazole were satisfied. The EFGWB had determined that tebuconazole is resistant to most degradative processes in the environment, including hydrolysis, photolysis in water and aerobic and anaerobic metabolism. Only minor degradation occurred in soil photolysis studies. The photolytic half-life of tebuconazole is 19 days. Laboratory and field studies have shown that the mobility of tebuconazole in soil is minimal. Therefore, Bayer concludes that tebuconazole bears no apparent risk to ground water under most circumstances.

3. *Non-dietary exposure.* Although current registrations and the proposed use for grasses grown for seed are limited to commercial crop production, Bayer has submitted an application to register tebuconazole on turf. Bayer has conducted an exposure study designed to measure the upper bound acute exposure potential of adults and children from contact with tebuconazole 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 exposure (MOE) of 1,518 8,561 for 10-year-old children and 1,364 - 7,527 for 5-year-old children were estimated by comparing dermal exposure doses to the tebuconazole no-observable effect level of 1,000 mg/kg/day established in a subacute dermal toxicity study in rabbits. The estimated safe residue levels for tebuconazole on treated turf for 10-year-old children ranged from 4.8 - 27.3 $\mu g/cm^2$ and for 5-year-old children from 4.4 - 24.0 $\mu g/cm^2$. This compares with the average tebuconazole transferable residue level of 0.319 $\mu g/cm^2$ present immediately after the sprays have dried. Bayer concludes that these data indicate that children can safely contact tebuconazole-treated turf as soon after application as the spray has dried.

D. Cumulative Effects

At this time, the EPA has not made a determination that tebuconazole and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for this tolerance, Bayer has considered only the potential risks of tebuconazole in its aggregate exposure.

E. Safety Determination

1. *U.S. population.* Chronic Dietary Exposure: Based on a complete and reliable toxicity database, the EPA has adopted an RfD value of 0.03 mg/kg/day. This RfD is based on a 1–year dog study with a NOEL of 2.96 mg/kg/day and an uncertainty factor of 100. Using the conservative exposure assumptions described above, Bayer has been advised that the EPA has concluded that aggregate dietary exposure to tebuconazole from the previously established and the proposed tolerances will utilize 5.1 % of the RfD for the U.S. population (48 states) and 30.7% of the RfD for the most highly exposed population subgroup (non-nursing infants, <1 year old). There is generally no concern 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. Therefore, Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebuconazole.

2. *Acute dietary exposure.* EPA recently proposed a tiered approach to estimate acute dietary exposure. The methods proposed by the EPA were reviewed and supported by the FIFRA Scientific Advisory Panel (SAP, 1995). EPA's Tier 1 method is based on the assumption that residue concentrations do not vary. The analysis assumes that all residues have the same magnitude, typically the highest field trial residue or tolerance value. This value is assumed for all points along the consumption distribution, resulting in a distribution of dietary exposure. Bayer has been advised that the EPA conducted an acute dietary analysis using the NOEL of 10 mg/kg/day for developmental toxicity in the mouse. The EPA has calculated a high end Margin of Exposure (MOE) value of 1,000 for the population subgroup of concern (females 13+). In addition, Bayer has calculated 95th percentile MOE for the following population groups: overall U.S. population (MOE = 2,528), infants (MOE = 711), children 1 to 6 years of age (MOE = 1,145) , females 13 years and older (MOE = 4,285), and males 13 years and older (MOE = 3,685). Therefore, since EPA considers values of 100 or more satisfactory, there is no concern from acute dietary exposure.

3. *Infants and children.* In assessing the potential for additional sensitivity of

infants and children to residues of tebuconazole, the data from developmental studies in both rat and rabbit and a two-generation reproduction study in the rat should be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity. A developmental toxicity study in the rat, a developmental toxicity study in the rabbit, two developmental studies in the mouse and a 2-generation rat reproduction study have been conducted with tebuconazole. Maternal and developmental toxicity NOELs of 30 mg/kg/day were determined in the rat and rabbit studies. An oral mouse developmental toxicity study had maternal and developmental toxicity NOELs of 10 mg/kg/day while the mouse dermal developmental study had a maternal NOEL of 30 mg/kg/day and a developmental toxicity NOEL of 1,000 mg/kg/day. The parental and reproductive NOELs in the 2-generation rat reproduction study were determined to be 15 mg/kg/day (300 ppm). In all cases, the reproductive and developmental NOELs were greater than or equal to the parental NOELs. This indicates that tebuconazole does not pose any increased risk to infants or children. 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 tebuconazole relative to pre- and post-natal effects is complete. Further for tebuconazole, the NOEL of 2.96 mg/kg/bwtt from the 1–year dog study, which was used to calculate the RfD, is already lower than the NOELs from the developmental studies in rats (30 mg/kg bwt/day) and rabbits (30 mg/kg bwt/day) by a factor of 10 times. Since a hundredfold uncertainty factor is already used to calculate the RfD, Bayer surmises that an additional uncertainty factor is not warranted and that the RfD at 0.03 mg/kg/bwtt/day is appropriate for assessing aggregate risk to infants and children. Using the conservative exposure assumptions, Bayer has concluded from the EPA's recent chronic dietary analysis that the percent of the RfD utilized by aggregate exposure to residues of tebuconazole ranges from 14.2% for children 1 to 6 years old up to 30.7% for non-nursing infants. EPA generally has no concern for exposure below 100 % of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Bayer concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of tebuconazole, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Issues

No CODEX Maximum Residue Levels (MRLs) have been established for residues of tebuconazole on any crops at this time. Data have not been submitted to the Joint Meeting of the Food and Agriculture Organization Panel of Experts on Pesticide Residues in Food and the Environment and the World Health Organization Expert Group on Pesticide Residues (JMPR) to establish Codex MRLs for grasses grown for seed.

G. Mode of Action

Tebuconazole, the active ingredient of Folicur 3.6 F is a sterol demethylation inhibitor (DMI) fungicide. It is systemic and shows activity against rusts (*Puccinia spp.*) and powdery mildew infecting grasses grown for seed. Tebuconazole provides protective activity by preventing completion of the infection process by direct inhibition of sterol synthesis. It is rapidly absorbed by plants and translocated systemically in the young growing tissues.

2. Ciba Crop Protection

6F4656/6H5746

EPA has received pesticide petitions (PP) 6F4656/6H5746 from Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C 346a, to amend 40 CFR part 180 by establishing tolerances for residues of the fungicide cyprodinil (4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine) in or on the agricultural commodities almond nutmeats at 0.04 ppm, almond hulls at 0.1 ppm, grapes at 3.0 ppm, raisins at 3.0 ppm, the pomefruit crop grouping at 0.1 ppm, apple pomace - wet at 0.4 ppm, and the stone fruit crop grouping at 2.0 ppm. The proposed analytical method for determining residues uses high performance liquid chromatography with UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition. (PM 21)

A. Cyprodinil Uses

Cyprodinil is the first fungicide in a new chemical class known as the anilinopyrimidine and is active against important Botrytis, Monilinia and Venturia diseases of deciduous fruit and nut crops. Cyprodinil with a unique mode of action, controls pathogens resistant to other chemical classes. Application rates range from 0.125 to 0.5 lb active ingredient per acre per application depending upon disease and time of application.

B. Residue Chemistry

1. *Metabolism*. Ciba believes the metabolism of cyprodinil has been well characterized in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for only parent cyprodinil.

2. *Analytical methodology.* Ciba has submitted a practical analytical method involving extraction, filtration, and solid phase cleanup of samples with analysis by HPLC and UV. The limits of quantitation (LOQ) for various commodities are as follows: fruit, grain, juice - 0.02 ppm; forage, fodder, straw - 0.05 ppm; and grapes - 0.01 ppm.

C. Magnitude of Residue

This petition is supported by field residue trials conducted on almonds, grapes, and representative members of the Pome Fruit and the Stone Fruit Crop Groupings. All samples were analyzed for parent residues of cyprodinil.

Residues found in the almond nutmeats and hulls were all less than respective LOQ's of 0.02 ppm and 0.05 ppm. Tolerances at twice the LOQ for these commodities have been proposed. In grapes, the maximum residues found for fresh fruit and raisins were 2.0 ppm and 2.9 ppm, respectively. Residues did not concentrate in grape juice. Tolerances of 3.0 ppm for grapes and raisins have been requested. In pome fruit, maximum residues ranged from 0.030 ppm to 0.061 ppm. The results of a processing study on apples using exaggerated rates showed concentration of residues in wet pomace with an average concentration factor of 4X. Residues in apple juice were not detectable at the LOQ (< 0.01 ppm). Tolerances of 0.1 ppm for the RAC of the Pome Fruit Crop Grouping and 0.4 ppm for wet apple pomace have been proposed. In stone fruit, maximum

residues ranged from 0.82 ppm to 1.7 ppm. A tolerance of 2.0 ppm has been proposed for the Stone Fruit Crop Grouping. Based upon the results of a three level dairy feeding study, Ciba believes no transfer of residue to animals is expected through their diet and that tolerances in milk, meat, poultry, and eggs are not required.

D. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRL's) established for residues of cyprodinil in or on raw agricultural commodities.

E. Toxicological Profile of Cyprodinil

The following mammilian toxicity studies have been conducted to support the tolerances of cyprodinil:

1. A rat acute oral study for cyprodinil with a LD_{50} of 2,796 mg/kg.
2. A rat acute dermal study for cyprodinil with a LD_{50} > 2,000 mg/kg.
3. A rat inhalation study for cyprodinil with a LC_{50} > 1.2 mg/liter air.
4. A primary eye irritation study in rabbits showing cyprodinil as minimally irritating.
5. A primary dermal irritation study in rabbits showing cyprodinil as slightly irritating.
6. A skin sensitization study in guinea pigs showing cyprodinil as a weak sensitizer.
7. A 28–day dermal study in the rat with a NOEL of 5 mg/kg based on clinical signs.
8. A 90–day feeding study in the dog with a NOEL of 1500 ppm (37.5 mg/kg) based on reduced food intake and body weight.
9. A 90–day feeding study in the mouse with a NOEL of 500 ppm (75 mg/kg) based on liver histologic changes.
10. A 90–day feeding study in the rat with a NOEL of 50 ppm (5 mg/kg) based on hematologic and histologic findings.
11. A 12–month feeding study in the dog with a NOEL of 2,500 ppm (62.5 mg/kg) based on liver histologic changes.
12. An 18–month oncogenicity feeding study in the mouse with a NOEL of 2,000 ppm (300 mg/kg). The MTD was 5,000 ppm based on reduction in body weight gain and no evidence of oncogenicity was seen.
13. A 24–month chronic feeding/oncogenicity study in the rat with a NOEL of 75 ppm (3.75 mg/kg) based on hematologic and histologic findings. The MTD was 2,000 ppm based on liver histopathology and no evidence of oncogenicity was seen.
14. An oral teratology study in the rat with a maternal NOEL of 200 mg/kg based on reductions in body weight gain and food consumption and a fetal NOEL of 200 mg/kg based on decreased pup weight and delayed skeletal growth at 1,000 mg/kg.
15. An oral teratology study in the rabbit with a maternal NOEL of 150 mg/kg based on reduction in body weight gain and a fetal NOEL of 400 mg/kg based on the absence of any fetal effects.
16. A 2–generation reproduction study in the rat with a systemic NOEL of 100 ppm and a fetal NOEL of 1,000 ppm (100 mg/kg). A slight decrease in pup weight at birth and subsequent body weight gain during the lactation phase was observed only at the maternally toxic dose of 4,000 ppm without any effects on reproduction and fertility.
17. *In vitro* gene mutation test: Ames assay - negative; Chinese hamster V79 cell test - negative; rat hepatocyte DNA repair test - negative.
18. *In vitro* chromosome test: Chinese hamster ovary cell cytogenetic test - negative.
19. *In vivo* mutagenicity test: mouse bone marrow test - negative.

F. Threshold Effects

1. *Chronic effects.* Based on the available chronic toxicity data, Ciba Crop Protection believes the Reference dose (RfD) for cyprodinil is 0.0375 mg/kg/day. This RfD is based on a 2–year feeding study in rats with aNo-Observed Effect Level (NOEL) of 3.75 mg/kg/day (75 ppm) and an uncertainly factor of 100. No additional modifying factor for the nature of effects was judged to be necessary as liver sinusoidal dilatation was the most sensitive indicator of toxicity in that study.

2. *Acute toxicity.* The risk from acute dietary exposure to cyprodinil is considered to be very low. The lowest NOEL in a short term exposure scenario, identified as 150 mg/kg in the rabbit teratology study, is fortyfold higher than the chronic NOEL. Since chronic exposure assessment did not result in any margin of exposure less than 400 for even the most impacted population subgroup, Ciba believes the margin of exposure is greater than 100 for any population subgroups; EPA considers margins of exposure of 100 or more as satisfactory.

G. Non-threshold Effects

Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986 (51 FR 33992), Ciba believes cyprodinil to be in Group ''E''(no evidence of carcinogenicity. There was no evidence of carcinogenicity in an 18–month feed study in mice and a 24–month feeding in rats. Dosage levels in both the mouse and the rat studies were adequate for identifying a cancer risk.

H. Aggregate Exposure

1. *Dietary exposure.* For the purposes of assessing the potential dietary exposure under the proposed tolerances, Ciba has estimated aggregate exposure based upon the Theoretical Maximum Residue Concentration (TMRC) from the requested tolerances: Almonds — 0.04 ppm for the raw agricultural commodity (RAC) and 0.1 ppm for hulls; Grapes — 3.0 ppm for the RAC and 3.0 ppm for raisins; Pome Fruit Crop Grouping — 0.1 ppm for the RAC and 0.4 ppm for apple wet pomace; and Stone Fruit Crop Grouping — 2.0 ppm for the RAC. The TMRC is a ''worst case'' estimate of dietary exposure since it assumes 100 % of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels. In conducting this exposure assessment, Ciba has made very conservative assumptions — 100% of all almonds, grapes, pome fruit and stone fruit commodities will contain cyprodinil residues at tolerance levels — which result in an overestimate of human exposure.

2. *Drinking water exposure.* Cyprodinil is rapidly degraded in the environment via photolysis and microbial degradation; aqueous and soil photolysis half lives for cyprodinil are 12 days and 67 days, respectively. The aerobic metabolism half life is 25 days and the leaching potential for cyprodinil is low (K_{oc} = 1,550 to 2,030). Based on these data, Ciba does not anticipate exposure to residue of cyprodinil in drinking water.

3. *Non-dietary exposure.* Ciba believes that the potential for non-occupational exposure to the general public is unlikely except for potential residues in food crops discussed above. The proposed uses for cyprodinil are for agricultural crops and the product is not used residentially in or around the home.

Ciba believes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by cyprodinil would be cumulative with those of any other chemicals. Consequently, Ciba is considering only the potential exposure to cyprodinil in its aggregate risk assessment.

I. Safety To the U.S. Population

Reference dose. Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base for cyprodinil, Ciba

has calculated aggregate exposure levels for this chemical. Based on chronic toxicity endpoints, only 4% of the RfD will be utilized for the U.S. general population. EPA usually has no concern for exposures below 100 % of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Ciba concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyprodinil residues.

J. Safety to Infants and Children

Developmental delays (reduced pup weight and ossification) were observed in the rat teratology study and 2-generation rat reproduction study at maternally toxic doses. The lowest NOEL for this effect was established in the 2-generation study at 100 mg/kg (1,000 ppm). The finding is judged to be a nonspecific, secondary effect of maternal toxicity. No developmental toxicity was observed in the rabbit teratology study.

Reference dose. Using the same conservative exposure assumptions as employed for the determination in the general population, Ciba has calculated the utilization of RfD by aggregate exposure to residues of cyprodinil to be 12% for nursing infants less than 1 year old, 22% for non-nursing infants less than 1 year old, 12% for children 1 to 6 years old, and 6% for children 7 to 12 years old. Ciba believes that under the worst case assumptions which overestimate exposure to infants and children, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyprodinil residues.

K. Estrogenic effects

Cyprodinil does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that cyprodinil might have any effects on endocrine function related to development and reproduction. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

[FR Doc. 97–8397 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181041; FRL 5597–8]

Cymoxanil, Propamocarb Hydrochloride and Dimethomorph; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the ''Applicant'') to use the pesticides cymoxanil (CAS 57966–95–7), propamocarb hydrochloride (CAS 25606–41–1) and dimethomorph (CAS 110488–70–5) to treat potentially up to 50,000 acres of tomatoes to control immigrant strains of late blight which are resistant to historically used control materials. The Applicant proposes the use of either new (unregistered) chemicals or the first food use of an active ingredient therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before April 17, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181041,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of cymoxanil, propamocarb hydrochloride, and/or dimethomorph on tomatoes to control late blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Recent failures to control late blight in tomatoes as well as potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight *Phytophthora infestans*, which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with metalaxyl.

The Applicant states that presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. The Applicant states that each of these requested chemicals has been shown to be effective against these strains of late blight. Each active ingredient holds current registrations throughout many European countries for control of this disease. The Applicant indicates that at least a 30 percent yield reduction is expected based on the current infestation. Net revenues are expected to be reduced by over $12 million for the affected acreage without the use of these requested chemicals.

The Applicant proposes to apply propamocarb hydrochloride, manufactured by AgrEvo USA Company, as Tattoo C, at a maximum rate of 0.9 lbs. active ingredient [(a.i.)], (2.3 pt of product) per acre by ground or air, with a maximum of 5 applications per season. A 7–day PHI will be observed. Use under this exemption could potentially amount to

a maximum 225,000 lbs. of propamocarb hydrochloride.

The Applicant proposes to apply cymoxanil, manufactured by E.I. du Pont de Nemours and Company, as Curzate M-8, and as Manex C-8, manufactured by Griffin Corporation, at a maximum rate of 0.12 lbs. a.i. (1.5 lb. of product) per acre, by ground or air, with a maximum of 7 applications per season and a 5–day PHI. Use under this exemption could potentially amount to a maximum 42,000 lbs. of cymoxanil.

The Applicant proposes to apply dimethomorph at a maximum rate of 0.2 lbs. a.i. (2.25 lb. of product) per acre, by ground or air, with a maximum of 5 applications per season and a 5–day PHI. Use under this exemption could potentially amount to a maximum 50,000 lbs of dimethomorph.

This notice does not constitute a decision by EPA on the applications. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) or the first food use of an active ingredient. Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181041] (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 official notice record is located at the address in **ADDRESSES** at the beginning of this document.

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. Comment 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 [OPP–181041]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Florida Department of Agriculture and Consumer Services.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 24, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–8398 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181038; FRL 5594–4]

Fenoxycarb; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received and granted specific exemption requests from the Oregon and Washington Departments of Agriculture (hereafter referred to as the ''Applicants'') for use of the pesticide fenoxycarb (CAS 72490–01–8) to control pear psylla *Cacopsylla pyricola* on up to 18,900, and 26,000 acres of pears, respectively. The Applicants propose the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment about granting the exemptions.

DATES: Comments must be received on or before April 17, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181038,'' should be submitted by mail 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. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181038]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8328; e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of the insecticide fenoxycarb, to control pear psylla, on up to 18,900 acres of pears in Oregon, and 26,000 acres of pears in Washington. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

The Applicants state that pear psylla is a major, chronic pest of pear orchards. If the pest is left uncontrolled, it will cause dramatic yield decreases, and eventual tree debilitation. Damage is caused by honeydew, secreted by the pear psylla nymphs while feeding, which causes deformed fruit and russeting, leading to major quality problems, downgrading of fruit, and increased cullage. In addition, the honeydew causes secondary problems with black sooty mold on the fruit. Tree

vigor is reduced by the toxin introduced by the feeding of pear psyllas which ultimately reduces overall yield. The Applicants state that the need for a method of reducing the overwintering adult population before they lay appreciable numbers of eggs in the spring is critical to pear psylla control. The only effective pre-bloom materials for some years were the synthetic pyrethroids, permethrin and fenvalerate. When widespread resistance to these materials became evident in the psylla population by 1987–88, the Applicants state that cyfluthrin was used under section 18 exemptions in 1988 – 1992, and was found to be efficacious.

In 1993, this use of fenoxycarb was first requested by Washington state, who claimed that resistance to cyfluthrin was being observed. However, the toxicology data available at that time for fenoxycarb did not support this use, and cyfluthrin was again used under section 18 during the 1993 season. In the 1994, 1995 and 1996 seasons, both Washington and Oregon requested exemptions for this use. Adequate toxicology data were available to support the use under section 18, and the exemptions were subsequently granted. The Applicants claim that most of the pear psylla populations are now resistant to cyfluthrin, and are therefore again requesting this use of fenoxycarb for control of pear psylla in pears.

The Applicants wish to treat up to 18,900 acres of pear trees in Oregon, and up to 26,000 acres in Washington. This would translate to a possible total of 4,725 pounds of active ingredient [(a.i.)] (18,900 lbs. product) in Oregon, and up to 6,500 lbs. a.i. (26,000 lbs. product) in Washington. Up to two applications would be made per growing season, at a maximum rate of 2 oz. a.i. (8 oz. product) per acre, diluted in water to make a minimum spray volume of 50–400 gallons per acre. Application of fenoxycarb would not be allowed by air or through chemigation equipment. Fenoxycarb would be used pre-bloom and would not be allowed to be applied during or after pear bloom, nor to open blossoms of weeds or cover crops. Negligible residues are expected because this is a pre-bloom only use and available residue chemistry data indicate non-detectable residues will occur.

The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicitation of public comment on an application for a specific exemption proposing the first food use of an active ingredient. Normally, a notice of receipt shall give the public 15 days in which to file comments on the application. The Administrator may shorten or eliminate the comment period if she determines that the time available for a decision on the application requires it (40 CFR §166.24). The comment period has been eliminated for these specific exemption requests because implementation of the Food Quality Protection Act delayed application processing, the use season had started and available data indicate that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposure and all other exposures for which there is reliable information.

A record has been established for this notice under docket number [OPP–181038] (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 Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Filed Operations Division at the address above.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: March 24, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–8399 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–726; FRL–5594–9]

ISK Biosciences Corporation; 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 time-limited tolerances for residues of the fungicide, chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on non-bell peppers. This notice includes a summary of the petition that was prepared by the petitioner, ISK Biosciences Corporation.

DATES: Comments, identified by the docket control number [PF-726], must be received on or before, May 2, 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 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-726]. 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: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6226; e-mail: gilesparker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4676) from ISK Biosciences Corporation, 5966 Heisley Road, P.O. Box 8000, Mentor, Ohio 44061-8000 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR 180.275 by establishing a time-limited tolerance for a period of 2 years for residues of the fungicide chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on the raw agricultural commodity non-bell peppers at 5.0 parts per million (ppm). ISK Biosciences Corporation has committed to providing additional residue data during this 2–year period from trials conducted in Mexico in support of a permanent tolerance. The proposed analytical method is by electron capture 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 petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, ISK Biosciences 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 ISK Biosciences 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 has made minor edits to the summary for the purpose of clarity.

I. ISK Biosciences' Petition Summary

A. Residue Chemistry Data

1. *Plant/animal metabolism*. The nature of the residue of chlorothalonil in plants and animals, including ruminants, is well understood. Chlorothalonil is not systemic in plants. Any chlorothalonil residue found on non-bell peppers occurs as a surface residue. Chlorothalonil is rapidly metabolized in the ruminant and is not transferred to meat and milk from the dietary consumption by animals. Furthermore, chlorothalonil is not stable in meat or milk.

2. *Analytical method*. An adequate analytical method (gas chromatography) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual, Vol. II (PAM II).

3. *Magnitude of the residues*. Residue data from studies conducted with non-bell peppers support a tolerance of 5.0 ppm for combined residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on the raw agricultural commodity.

B. Toxicological Profile

The following studies on file with the Agency support this petition:

1. *Acute toxicity*. Acute toxicity studies include an acute oral rat study on technical chlorothalonil with an LD_{50} >10,000 milligrams/kilograms (mg/kg), an acute dermal toxicity study in the rabbit with an LD_{50} >20,000 mg/kg, a 4–hour inhalation study with finely ground technical chlorothalonil resulting in a LC_{50} of 0.092 mg/L (actual airborne concentration), a primary eye irritation study with irreversible eye effects in the rabbit at 21 days, a primary dermal irritation study showing technical chlorothalonil is not a dermal irritant, and a dermal sensitization study showing technical chlorothalonil is not a skin sensitizer.

2. *Genotoxicity*. The mutagenic potential of chlorothalonil has been evaluated in a large number of studies covering a variety of endpoints. The overall conclusion is that chlorothalonil is not mutagenic.

Mutagenicity studies with chlorothalonil include gene mutation assays in bacterial and mammalian cells; *in vitro* and *in vivo* chromosomal aberration assays; DNA repair assays in bacterial systems; and cell transformation assays. All were negative with the following two exceptions:

Chlorothalonil was positive in an *in vitro* chromosomal aberration assay in CHO cells without metabolic activation but was negative with metabolic activation.

In vivo chromosomal aberration studies in rats and mice were negative and one study in the Chinese hamster was equivocal. The results of this study could not be confirmed in a subsequent study at higher doses. The conclusion was that chlorothalonil does not cause chromosome aberrations in bone marrow cells of the Chinese hamster. It can be concluded that chlorothalonil does not have clastogenic potential in intact mammalian systems.

In bacterial DNA repair tests, chlorothalonil was negative in *Bacillus subtilis*, but was positive in Salmonella typhimurium. In an *in vivo* DNA binding study in rats with ^{14}C-chlorothalonil, there was no covalent binding of the radiolabel to the DNA of the kidney, the target organ for chlorothalonil toxicity in rodents.

3. *Developmental and reproductive toxicity*. A developmental toxicity study with rats given gavage doses of 0, 25, 100, and 400 mg/kg body weight/day from days 6 through 15 of gestation resulted in a no observed effect level (NOEL) for maternal toxicity of 100 mg/kg/day based on increased mortality, reduced body weight, and a slight increase in early resorptions at the highest dose. There were no developmental effects observed at any dose in this study.

A developmental toxicity study in rabbits given gavage doses of 0, 5, 10, or 20 mg/kg/day on days 7 through 19 of gestation resulted in a maternal NOEL of 10 mg/kg/day. Effects observed in the dams in the high-dose group were decreased body weight gain and reduced food consumption. There were no developmental effects observed in this study.

A two-generation reproduction study in rats fed diets containing 0, 500, 1,500 and 3,000 ppm resulted in a reproductive NOEL of 1,500 ppm (equivalent to 115 mg/kg/day) based on lower neonatal body weights by day 21. There were no effects seen on any other reproductive parameter at any dose level in this study.

4. *Subchronic toxicity*. i. A subchronic toxicity study (90 days) was conducted in rats at doses of 0, 1.5, 3.0, 10, and 40 mg/kg bwt. Treatment related hyperplasia and hyperkeratosis of the forestomach was observed at the two highest dose levels. Although the initial histopathological evaluation did not demonstrate any nephrotoxicity, a subsequent evaluation observed a treatment-related increase in hyperplasia of the proximal tubule epithelium at 40 mg/kg bwt in the male rats but not in the females. The no effect level for renal histopathology was 10

mg/kg bwt in males and 40 mg/kg bwt in females.

ii. A 90–day oral toxicity study was conducted in dogs with dose levels of technical chlorothalonil of 15, 150, and 750, mg/kg bwt/day. The two highest dosages resulted in lower body weight gain in male dogs. The no observed adverse effect level (NOAEL) was 15 mg/kg/day. There were no macroscopic or microscopic tissue alterations related to chlorothalonil and there were no signs of renal toxicity.

iii. Two 21–day dermal toxicity studies have been conducted with technical chlorothalonil. In the initial study doses of 50, 2.5, and 0.1 mg/kg bwt/day were administered to rabbits. The NOEL for systemic effects was greater than 50 mg/kg bwt/day and the NOEL for dermal irritation was 0.1 mg/kg bwt/day.

A subsequent 21–day dermal study was conducted in male rats, to specifically evaluate the potential for nephrotoxicity in this laboratory species following dermal dosing. In this study the doses were 60, 100, 250, and 600 mg/kg bwt/day. The NOEL for nephrotoxicity was greater than 600 mg/kg bwt/day.

5. *Estrogenic effects.* Based upon all of the chronic toxicity, teratogenicity, mutagenicity, and reproductive studies conducted with chlorothalonil and its metabolites, there were no results which indicate any potential to cause estrogenic effects or endocrine disruption. These effects would have manifested themselves in these studies as reproductive or teratogenic effects, or by producing histopathological changes in estrogen sensitive tissues such as the uterus, mammary glands, or the testes. Thus, it can be concluded based upon the *in-vivo* studies, that chlorothalonil does not cause estrogenic effects.

6. *Chronic toxicity.*—i. A 12–month chronic oral toxicity study in Beagle dogs was conducted with technical chlorothalonil at dose levels of 15, 150, and 500 mg/kg/day. The NOAEL was 150 mg/kg/day based on lower blood albumin levels at the highest dose. There was no nephrotoxicity observed at any dose in this study. This study replaced an old outdated study that was not conducted under current guidelines and did not use the current technical material.

ii. A chronic feeding/carcinogenicity study with Fischer 344 rats fed diets containing 0, 800, 1,600 or 3,500 ppm (equivalent to 0, 40, 80, or 175 mg/kg bwt/day) for 116 weeks in males or 129 weeks in females, resulted in a statistically higher incidence of combined renal adenomas and carcinomas. At the high dose, which was above the MTD, there was also a statistically significant higher incidence of tumors of the forestomach in female rats.

iii. In a second chronic feeding/carcinogenicity study with Fischer 344 rats, designed to define the NOEL for tumors and the preneoplastic hyperplasia, animals were fed diets containing 0, 2, 4, 15, or 175 mg/kg/day. The NOEL in this study, based on renal tubular hyperplasia, was a nominal dose of 2 mg/kg bwt/day. Because of the potential for chlorothalonil to bind to diet, the 2 mg/kg bwt/day dose, expressed as unbound chlorothalonil is 1.8 mg/kg bwt/day. The NOEL for hyperplasia and hyperkeratosis of the forestomach was 4 mg/kg bwt/day or a dose of 3.8 mg/kg bwt/day based on unbound chlorothalonil.

iv. A 2–year carcinogenicity study, conducted in CD-1 mice at dietary levels of 0, 750, and 1,500 or 3,000 ppm (equivalent to 0, 107, 214, or 428 mg/kg/day), resulted in a statistically higher incidence of squamous cell carcinomas of the forestomach in both sexes, and a statistically higher incidence of combined renal adenomas/carcinomas in only the male mice receiving the low dose. There were no renal tumors in any female mouse in this study.

v. A 2-year carcinogenicity study in male CD-1 mice for the purpose of establishing the no effect level for renal and forestomach effects, was conducted at dietary levels of 0, 10/15, 40, 175, or 750 ppm (equivalent to 0, 1.4/2.1, 5.7, 25, or 107 mg/kg/day). The NOEL level for renal effects was 40 ppm and the NOEL for forestomach effects was 15 ppm. This study did not duplicate the results from the previous study where a statistically higher incidence of renal tumors, when compared to controls, was observed at 750 ppm.

In 1987, EPA's Office of Pesticide Programs' Toxicology Branch Peer Review Committee classified chlorothalonil as a B2 (probable human carcinogen), based on evidence of carcinogenicity in the forestomach and kidneys of rats and mice. The Agency currently regulates chlorothalonil as a B2 carcinogen although ISK Biosciences Corporation has provided a significant amount of mechanistic data indicating that the tumors result from a threshold mechanism. A potency factor, Q1*, of 0.00766 $(mg/kg/day)^{-1}$ has been used by the Agency when conducting mathematical modeling to estimate carcinogenic risk to man. ISK Biosciences Corporation believes that because the nephrotoxicity seen in the rat is due to a threshold mechanism, any risk associated with chlorothalonil can be managed using the margin of safety (exposure) approach.

Numerous metabolism and toxicology studies indicate that chlorothalonil is non-genotoxic and produces a species-specific renal toxicity in the rat that eventually may lead to tumor formation through an epigenetic mechanism.[1] Studies comparing metabolism and toxicological effects in dogs with those in rats demonstrate that the renal effects observed in the rat are due to the exposure of the kidney of the rat to significant levels of nephrotoxic thiol metabolites of chlorothalonil. In the dog, no thiol metabolites are found and there are no toxic effects seen in kidneys of dogs dosed with high levels of chlorothalonil.

7. *Reference Dose (RfD).* The no effect level for chlorothalonil in the rat is 1.8 mg/kg bwt based on the nephrotoxicity observed in the chronic rat study. The no effect level in the dog was 15 mg/kg bwt in the 90–day study and 150 mg/kg bwt based on the one-year study. No effect levels for maternal toxicity from developmental studies are 10 mg/kg bwt in rabbits and 100 mg/kg bwt in the rat. The no effect level for pup growth in the reproduction study was 1,500 mg/kg bwt which would be most conservatively estimated as equating to approximately 75 mg/kg bwt. Data indicate that the nephrotoxicity in the rat is produced through a mechanism for which there is a clear threshold. In a study which measured cell turnover in the rat kidney with bromodeoxyuridine (BRDU) immunohistochemical staining, a NOEL was established at 1.5 mg/kg bwt. Other chronic studies have established the NOEL for hyperplasia in the kidney to be 1.8 mg/kg bwt. If all the available toxicity data in laboratory animals is considered without regards to its applicability to humans, the lowest NOEL for any adverse effect would be 1.5 mg/kg bwt/day. Because the mechanism of toxicity which is related to the tumor formation in the kidney has been shown to have a threshold, the use of the normal 100 fold safety factor in conjunction with the 1.5 mg/kg no effect level would produce a RfD which would provide more than adequate safety for all of the possible effects seen in any laboratory animal.

In two recent reviews of chlorothalonil by the Joint Meeting of Pesticide Residue Experts (1990 and 1992), and the review by the World Heath Organization's International Program for Chemical Safety, these

[1] "Mechanistic Interpretation of the Oncogenicity of Chlorothalonil in Rodents and an Assessment of Human Relevance," by Drs. C. F. Wilkinson and J. C. Killeen, Regulatory Toxicology and Pharmacology 24: 69-84 (1996), Article No. 006.

esteemed groups concluded that the rat was not the appropriate species to use in consideration of the risk assessment for man. They concluded that the dog was the more appropriate species for determination of subchronic and chronic effects. If the toxicological data for the dog were used, the NOEL would be at least 15 mg/kg bwt, based on the most recent 90-day study in the dog.

Therefore, under the most conservative scenario (using the toxicological data in the rat), the RfD would be 1.8 mg/kg bwt/day divided by a 100 fold safety factor or 0.018 mg/kg bwt/day with a threshold model being used for carcinogenic risk assessment. In the scenario that uses the toxicological data in the dog, the reference dose would be 15 mg/kg bwt/day, divided by a safety factor of 100 or 0.15 mg/kg bwt/day.

C. Aggregate Exposure

The following is a description of the likelihood of exposure to chlorothalonil from various routes.

1. *Dietary exposure—i. food*. ISK Biosciences Corporation has conducted a dietary exposure analysis for chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile (SDS-3701) in or on non-bell peppers utilizing EPA's Dietary Risk Evaluation System (DRES) based on the 1977-78 Food Consumption Survey. The results demonstrate that the dietary exposure from anticipated residues of 0.5 ppm contributed from non-bell peppers is 0.00000218 mg/kg bwt/day for the U.S. population or 0.0121% of the RfD.

The Agency had calculated that the exposure of the general population from existing published tolerances for chlorothalonil is 0.000134 mg/kg bwt/day or 0.744 percent of the RfD.

ii. *Drinking water*. Chlorothalonil was included for monitoring in the National Survey of Pesticides in Drinking Water Wells conducted by EPA. No chlorothalonil residues were detected in any of the 1,300 community water systems and domestic wells (using methodology for chlorothalonil having a limit of detection [LOD] of 0.06 mg/l and limit of quantitation of 0.12 mg/l). The absence of chlorothalonil detections in the National Survey provides adequate information to conclude that chlorothalonil is not a contaminant in drinking water wells and that the population is not exposed to chlorothalonil in these water sources. These findings are consistent with the known physical/chemical properties of chlorothalonil including low water solubility (0.9 ppm) and high affinity for organic matter including soil. It has also been demonstrated that chlorothalonil does not leach into groundwater from applications made to growing crops.

Aerobic aquatic metabolism studies with chlorothalonil establish a half-life in natural aquatic habitats of less than 10 hours, depending on environmental conditions. Considering the short half-life of chlorothalonil in natural water/sediment systems and that surface water is filtered and treated prior to consumption, chlorothalonil is not likely to be present in drinking water obtained from natural surface water systems.

An exposure estimate, based on surface water concentration recently cited by EPA, would conclude that the average concentration in surface water would be less than 0.002 ppb. Assuming that everyone in the U.S. consumed untreated surface water, the exposure to chlorothalonil of the general population would be less than 5.8×10^{-7} mg/kg bwt/day. This would be a worst case scenario, which would greatly overestimate exposure.

2. *Non-dietary exposure*. Potential non-dietary exposures to chlorothalonil may result from the following uses of chlorothalonil. In each case, the exposure would be from the dermal route and only for an intermittent duration. The two 21–day dermal studies that have been conducted in the rabbit and rat indicate that there is no nephrotoxicity associated with the dermal exposure to chlorothalonil at dose levels up to 600 mg/kg/day. Therefore, the exposures from the uses of chlorothalonil listed below, would not be expected to add to the carcinogenic risk associated with chlorothalonil.

i. *Golf course uses*. Chlorothalonil products are commonly applied to golf course tees and greens to control a broad complex of turf diseases. Application to golf course fairways is much less common.

Golf is not a game played by infants or small children, therefore no exposure to infants and children would be anticipated.

ii. *Residential owner uses*. Applications of chlorothalonil products to home lawns are rare. Thus, there is very little exposure to chlorothalonil related to use on residential turf. Applications to roses and other ornamentals in home gardens is also a minor use of chlorothalonil.

iii. *Paint*. Chlorothalonil is used in paints and stains for control of mildew and molds on exterior surfaces of buildings. Chlorothalonil is also occasionally used for interior paints, but this use represents only a small proportion of the chlorothalonil used in paints. About 2% of the chlorothalonil used in paint is used in interior paint; however, only 0.2% or less of interior paints in the United States contain chlorothalonil. In paints chlorothalonil is tightly bound within the paint matrices; thus, effective control of mildew may last for several years and the potential for exposure is very limited.

iv. *Grouts*. Chlorothalonil is used in cement tile grouts, also for control of mildew and molds. Chlorothalonil is bound within the grout matrices and very little is available for exposure. This is a minor use of chlorothalonil and non-occupational dermal exposure of humans to chlorothalonil from this source is extremely low.

v. *Wood treatment*. Chlorothalonil is not currently used for pressure-treating wood. It is used for control of sapstain as a surface treatment on rough-cut, newly-sawn lumber to protect it from molds and mildews while drying. Being a surface residue, it is removed during the finishing operations prior to sale of the wood. Chlorothalonil does not occur in structural wood used for residential or occupational scenarios.

D. Cumulative Effects

ISK Biosciences has considered the potential for cumulative effects of chlorothalonil and other substances that have a common mechanism of toxicity. Chlorothalonil is a halogenated benzonitrile which readily undergoes displacement of the 2, 4, and 6 chlorines by glutathione and other thiol containing amino acids and proteins. In the rat, the thiol metabolites are sufficiently absorbed to produce a nephrotoxic effect. In dogs where this absorption does not occur, nephrotoxicity does not occur. ISK Biosciences does not have any information to indicate that toxic effects observed in rats occur through a mechanism which is common to any other agricultural chemical. Thus, consideration of common mechanisms of toxicity is not appropriate at this time.

Chlorothalonil should not be confused with chlorinated hydrocarbon pesticides which have significantly different chemical and biological properties.

E. Safety Determination

1. *U.S. population*. ISK Biosciences Corporation has conducted a risk assessment for chlorothalonil in or on non-bell peppers using the 1977-78 Food Consumption Survey and a potency factor, Q1*, of 0.00766 $(mg/kg/day)^{-1}$ and has determined that oncogenic dietary risks associated with

potential exposure using an anticipated residue of 0.5 ppm, would 1.7 x 10^{-8}.

The Agency has used a linearized model to estimate the carcinogenic risk associated with chlorothalonil, whereas ISK Biosciences believes that a threshold based model is appropriate. Using the overestimated exposure estimates of EPA, with a threshold based model and using the conservative RfD of 0.018 mg/kg bwt/day, the margin of safety for the general population would exceed 10,000 and the margin of safety for infants and children would exceed 7,000. Using corrected exposure estimates would obviously yield larger margins of exposure. Using a conservative RfD of 0.018 mg/kg/day, as the Agency has done in recent DRES analyses, and incorporating corrections needed in exposure values for mushrooms and several other lesser corrections, ISK Biosciences Corporation calculated the overall dietary exposure to ''anticipated residues'' of chlorothalonil from all registered uses and pending uses of chlorothalonil to be 0.36% of the RfD for the general U.S. population.

Because the worst case assumption for human exposure from drinking water indicate that exposure would be only 1% of the dietary exposure, the risk assessment is not significantly altered by considering the exposure from drinking water.

2. *Infants and children*. There is a complete data base for chlorothalonil which includes pre- and post-natal developmental toxicity data as well as mechanistic data related to the rodent specific nephrotoxicity observed in subchronic and chronic studies. The toxicological effects of chlorothalonil in rodents are well understood. Chlorothalonil has a low level of toxicity in dogs.

In a two-generation reproduction study in rats, all reproductive parameters investigated showed no treatment-related effects except pup weight gain. Specifically, the weights of pups exposed to chlorothalonil were comparable to controls at parturition through day 4 of lactation. It was only after day 4 of lactation, when the pups begin to consume the test diet, that body weight gain lags behind controls. This only occurred at the highest dose tested; 3,000 ppm. The dose of chlorothalonil the pups would receive would be far in excess of the estimated adult dose of 150 mg/kg bwt/day (3,000 ppm divided by 20). The doses for the pups could have easily exceeded 500 mg/kg bwt/day. Dose levels of 375 mg/kg bwt and above have been shown to significantly affect body weight in the rat. Therefore, the reduction of body weight gain observed in the reproduction study is considered to be comparable to the effects that have been observed in older rats. The NOEL for this effect was 1,500 ppm.

In developmental toxicity studies conducted in the rat and the rabbit, chlorothalonil did not cause any developmental effects even at dose levels that produced significant maternal toxicity. In the rabbit a dose level of 20 mg/kg bwt caused maternal toxicity, but there were no developmental effects and in the rat, a dose level of 400 mg/kg bwt caused maternal toxicity without developmental toxicity.

The extensive data base that is available for chlorothalonil is devoid of any indication that chlorothalonil would represent any unusual or disproportionate hazard to infants or children. Therefore, there is no need to impose an additional 10x safety factor for infants or children. The standard uncertainty factor of 100x should be used for all segments of the human population when calculating risks associated with chlorothalonil.

F. International Tolerances

There is currently no maximum residue level set for chlorothalonil on non-bell peppers by the Codex Alimentarius Commission.

II. Public Record

A record has been established for this notice under docket control number [PF–726] (including comments and data submitted electronically as described below). A public version of the 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 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: March 24, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–8388 Filed 4–1–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

March 25, 1997.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify 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: Persons wishing to comment on this information collection should submit comments June 2, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commissions, Room

234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.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 Number: 3060–####.

Title: Section 90.176 Coordination notification requirements on frequencies below 512 MHz.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 15.

Estimated Time Per Response: .25 hours.

Total Annual Burden: 975 hours.

Total Annual Cost: 0.

Needs and Uses: The reporting requirement in 90.176 is a result of comments sought in the Report and Order and Further Notice of Proposed Rule Making in PR Dck No. 92–235 and requires each Private Land Mobile frequency coordinator provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and, if requested, an engineering analyses. This requirement is necessary to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

OMB Approval Number: 3060–0051.

Title: Application for Renewal of Ship/Aircraft Radio Station License.

Form No.: FCC 405B.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals, State or Local Governments, Business or other For-Profit, Non-profit institutions.

Number of Respondents: 10,500.

Estimated Time Per Response: 10 minutes.

Total Annual Burden: 1,743 hours.

Needs and Uses: This form is used to verify existence of a station and to renew a license authorization when there are no changes or only certain minor changes to administrative data. FCC Rules require a Ship or Aircraft radio station license to be renewed every ten years. The Commission will use the information collected to update the existing database and to issue a renewed authorization.

The form is required by the Communications Act; International Treaties and FCC Rules—47 CFR Parts 1.922,1.926, 80.19 and 87.21.

During the last OMB cycle, the Commission separated the Ship and Aircraft renewal form into two separate collections, 3060–0051 and 3060–0615(FCC Form 405S), due to the large quantity of applications received. Since that submission, the Commission adopted a Report and Order to de-license the majority of Ship and Aircraft stations. Therefore, we are re-combining the Ship and Aircraft collections as 3060–0051(FCC Form 405B) and will let the collection for 3060–0615 expire. The number of respondents and burden have been adjusted accordingly due to the de-licensing and re-combining of the collections.

A space for the applicant to provide an Internet address is being added to the form. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application. In addition, the Commission is required to collect the Taxpayer Identification Number to comply with the Debt Collection Improvement Act of 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–8343 Filed 4–1–97; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

March 26, 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 information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify 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: Persons wishing to comment on this information collection should submit comments June 2, 1997.

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.

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 Number: 3060–####.

Title: Compliance and Information Customer Satisfaction Survey.

Form No.: N/A.

Type of Review: New collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; federal, state, local or tribal government(s).

Number of Respondents: 1,800.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 150 hours.

Total Annual Cost: 0.

Needs and Uses: The FCC Compliance and Information Bureau in order to assess their customer stasfaction programs is develping customer survey(s) on how they are handling their customer complaints, inquiries and requests for information. This survey will ensure that CIB is in compliance with the Commission's customer satisfaction mandate. This survey will measure response time, customer statisfaction and CIB outreach programs. The data will be used to plan future outreach programs and target areas of needed employee training.

OMB Number: 3060–0604.

Title: Implementation of Section 309(j) of the Communications Act, Competitive Bidding, Third Report and Order and Third Memorandum Opinion and Order and Further NPRM.

Type of Review: Extension of existing collection.

Form Number: N/A.

Respondents: Individuals; State or local governments; Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 10–17,770.

Estimated Time Per Response: .50 to 20 hours.

Total Annual Burden: 45,654 hours.

Needs and Uses: Collection of information is required so that the Commission can determine whether

narrowband PCS applicants are legally, technically and financially qualified to be licensed and whether applicants are entitled to receive certain benefits. The information will also be used to ensure that licensees who acquire their licenses through competitive bidding are not unjustly enriched by premature transfer of their licenses. Without the information, the Commission could not determine whether to issue the licenses to the applicants that provide telecommunication services to the public. The information is used by Commission staff in carrying out its duties under the Communications Act.

OMB Approval Number: 3060–0368.

Title: Section 97.523 Question pools.

Form No.: N/A.

Type of Review: Reinstatement without change.

Respondents: Individuals.

Number of Respondents: 3.

Estimated Time Per Response: 160 hours.

Total Annual Burden: 480 hours.

Total Annual Cost: 0.

Needs and Uses: The record keeping requirement contained in Section 97.523 is necessary to permit question pools used in preparing amateur examinations to be maintained by Volunteer-Examiner Coordinators (VEC's). These question pools must be published and made available to the public before the questions are used in an examination.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–8344 Filed 4–1–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Eligibility to Make Application to Become an Insured Bank under Section 5 of the Federal Deposit Insurance Act; Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of Statement of Policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is rescinding its Statement Regarding Eligibility to Make Application to Become an Insured Bank Under section 5 of the Federal Deposit Insurance Act (Statement of Policy). The Statement of Policy describes the analysis the FDIC used when carrying out a former statutory directive to evaluate certain factors in determining an industrial loan company's eligibility for deposit insurance. Since the statute is no longer in force, the FDIC is rescinding this outmoded Statement of Policy.

EFFECTIVE DATE: This Statement of Policy is rescinded April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director (202/898–6915), Division of Supervision; Jamey Basham, Counsel, (202/898–7265), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Statement of Policy is outmoded, and that the FDIC's written policies can be streamlined by its elimination.

The FDIC originally adopted the Statement of Policy on February 27, 1984 (49 FR 7865 (March 2, 1984)). It addresses issues surrounding implementation of certain provisions of the Garn-St. Germain Depository Institutions Act of 1982, Pub. L. 97–320 (Garn Act), which expanded the types of state-chartered depository institutions eligible for FDIC insurance, to include industrial banking companies and similar institutions. These special-purpose entities, known as industrial banks, industrial loan companies, industrial loan and thrift companies, or loan and investment companies, extend installment credit to consumers and accept some form of savings deposits. Before the Garn Act, the only eligible state-chartered entities were banks and trust companies with explicit statutory authority to accept deposits other than trust deposits.

The Garn Act amended section 5(a) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1815(a)) to list special procedural requirements for the FDIC to fulfill before insuring industrial banking companies lacking bank charters. The FDIC was required to determine that the industrial banking company was chartered and operating under state laws providing for examination, supervision, and liquidation comparable to banks.

In the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242 (Improvement Act), section 5(a) of the FDI Act was comprehensively rewritten without inclusion of these special requirements. As a result, the FDIC is no longer required to apply a specialized set of factors in determining the eligibility of industrial banking companies as a class for deposit insurance.

The Statement of Policy presents a mix of the details of the section 5(a) analysis and descriptions of the FDIC's approach to general eligibility issues relating to industrial banking companies. Given the removal of the section 5(a) factors from the FDI Act, the former analysis is no longer necessary and these portions of the Statement of Policy are outmoded. As for the latter analysis, a description of general eligibility issues was salutary during the Garn Act's implementation period, when numerous industrial banking companies were first presented with the issue of eligibility for such companies under the laws of their respective states. However, over a decade later, these questions arise rarely, and the FDIC's written policies can be streamlined by elimination of the Statement of Policy. For the above reasons, the Statement of Policy is rescinded.

By order of the Board of Directors.

Dated at Washington, D.C. this 25th day of March, 1997.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–8342 Filed 4–1–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

BACKGROUND: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1,

1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Robert T. Maahs, Supervisory Financial Analyst (202/872–4935) or Tina Robertson, Supervisory Financial Analyst (202/452–2949) for information concerning the specific bank holding company reporting requirements. The following may also be contacted regarding the information collection:

1. Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)
2. OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860)

SUPPLEMENTARY INFORMATION:

General Information

On December 30, 1996, the Board issued for public comment proposed revisions to certain bank holding company reports. The comment period expired on February 28, 1997. Three comment letters were received. None of the commenters addressed any specific issues relating to the current proposal. Two of the commenters generally were concerned with the amount of regulatory reporting burden imposed by the Y–9 and Y–11 series of reports and stated that the Federal Reserve should allow exemptions from reporting for institutions that meet certain criteria. These standardized reports are the primary source of financial information on bank holding companies and their non-banking subsidiaries. The Federal Reserve recognizes that there are costs associated with completing regulatory reports, and attempts to minimize reporting burden whenever possible without neglecting its responsibility of off-site supervision.

Another commenter stated that the Federal Reserve should consider eliminating inconsistencies between its form-and-content requirements for filings by bank holding companies and those of Article 9 of the U.S. Securities and Exchange Commission's Regulation S–X. The Federal Reserve believes that the filing of financial statements by bank holding companies is generally consistent with the requirements of Article 9 of Regulation S–X. However, minor differences may exist due to the standardized nature of these reports. In addition, more detailed disclosure of certain account balances may be required for analytical and supervisory purposes.

Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and regulation of all bank holding companies. The FR Y–9 and FR Y–11 series of reports historically have been, and continue to be, the primary source of financial information on bank holding companies and their nonbanking activities between on-site inspections. Financial information, as well as ratios developed from these reports, are used to detect emerging financial problems, to review performance for pre-inspection analysis, to evaluate bank holding company mergers and acquisitions, and to analyze a holding company's overall financial condition and performance as part of the Federal Reserve System's overall supervisory responsibilities.

Final Approval Under OMB Delegated Authority of the Revision of the Following Reports:

1. Report Title: Consolidated Financial Statements for Bank Holding Companies

Agency form number: FR Y–9C.
OMB control number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank holding companies.
Annual reporting hours: 188,682.
Estimated hours per response: Range from 5 to 1,250 hours.
Number of respondents: 1,389.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Data reported on the FR Y–9C, Schedule HC–H, Column A, requiring information on ''assets past due 30 through 89 days and still accruing'' and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

The FR Y–9C consolidated financial statements are currently filed by top-tier bank holding companies with total consolidated assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, all multibank bank holding companies with debt outstanding to the general public or engaged in certain nonbank activities, regardless of size, must file the FR Y–9C. The following bank holding companies are exempt from filing the FR Y–9C, unless the Board specifically requires an exempt company to file the report: bank holding companies that are subsidiaries of another bank holding company and have total consolidated assets of less than $1 billion; bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K.

The report includes a balance sheet, income statement, and statement of changes in equity capital with supporting schedules providing information on securities, loans, risk-based capital, deposits, average balances, off-balance sheet activities, past due loans, and loan charge-offs and recoveries.

Most of the proposed new items are needed to maintain consistency with comparable items recently proposed or previously added to the commercial bank Reports of Condition and Income (Call Report; FFIEC 031–034; OMB No. 7100–0036). The proposed revisions to the FR Y–9C consist of combining or eliminating several line items, revising the reporting for assets sold with recourse, implementing Financial Accounting Standards Board Statement Number 125, ''Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,'' for reporting transfers and servicing of financial assets, and adding the reporting of credit derivative instruments. The result of these revisions will be a net reduction of fourteen reporting items on the FR Y–9C. The proposed revisions do not include Call Report changes that were proposed by the Federal Financial Institutions Examination Council to improve the monitoring of interest rate risk exposures.

The Federal Reserve is attempting to minimize reporting burden by making appropriate reporting revisions in a manner consistent with the Call Report and effective with the same reporting period. Such revisions and clarifications to existing instructions have been incorporated into this report. Furthermore, additional clarifications to the existing intructions will be made in future reporting periods, as appropriate, upon review of the final Call Report instructions.

The Federal Reserve has approved the following revisions to the FR Y–9C, as previously proposed, that are effective with the March 31, 1997, reporting date:

Revisions To Parallel Proposed Call Report Changes

(1) Schedule HC—Consolidated Balance Sheet:

(a) Items 3.a and 3.b, ''Federal funds sold'' and ''Securities purchased under agreements to resell,'' will be combined into a single item (item 3). In addition, this single Schedule HC item will be reported on a fully consolidated basis, rather than including only the domestic offices of the bank holding company, the domestic offices of the bank holding company's Edge and Agreement subsidiaries, and IBFs. Corresponding changes will be made to Schedule HC–E—Quarterly Averages, item 2, and Schedule HI—Income Statement, item 1.f.

(b) Items 14.a and 14.b, ''Federal funds purchased'' and ''Securities sold under agreements to repurchase,'' will be combined into a single item (item 14). In addition, this single Schedule HC item will be reported on a fully consolidated basis, rather than including only the domestic offices of the bank holding company, the domestic offices of the bank holding company's Edge and Agreement subsidiaries, and IBFs. Corresponding changes will be made to Schedule HC–E—Quarterly Averages, item 8, and Schedule HI—Income Statement, item 2.b.

(c) Item 19, ''Mortgage indebtedness and obligations under capitalized leases,'' will be combined, as appropriate, with items 17 and 18, ''Other borrowed money.'' In addition, a corresponding change in definition will be made to Schedule HC–E—Quarterly Averages, item 9, ''All other borrowed money,'' to include mortgage indebtedness and obligations under capitalized leases.

(d) Item 26, ''Limited-life preferred stock (including related surplus),'' will be combined with existing item 21, ''Subordinated notes and debentures.'' In addition, the following revisions will be made that relate to limited-life preferred stock: (1) Schedule HC–E—Quarterly Averages, item 10, ''Limited-life preferred stock,'' will be deleted. (2) Schedule HI–A—Changes in Equity Capital, item 9, ''LESS Cash dividends declared on limited-life preferred stock,'' will be combined with item 8, ''LESS cash dividends declared on perpetual preferred stock,'' and the caption for item 8 will be revised to ''LESS cash dividends declared on preferred stock.'' (3) Schedule HI–A—Changes in Equity Capital, memorandum item 1, ''Sale of limited-life preferred stock,'' will be deleted.

(2) Schedule HC–A—Securities:

(a) Memorandum item 3, ''Held-to-maturity debt securities restructured and in compliance with modified terms (included in Schedule HC–A, items 3.a, 3.b, 4.a, and 5.a, column A),'' will be deleted. In addition, memorandum item 3.a, ''Held-to-maturity debt securities restructured and in compliance with modified terms if the restructured obligation yielded a market rate at the time of restructuring (included in Schedule HC–A, item M.3),'' will be deleted.

(b) Memorandum items 9.a and 9.b, ''Investments in mutual funds'' and ''Other equity securities with readily determinable fair values,'' will be combined into a single item (memorandum item 9.a).

(3) Schedule HC–B, Part I—Loans and Lease Financing Receivables: Memorandum item 4, ''Commercial paper included in loans (Part 1, items 1–8 above),'' will be deleted. In addition, the instructions will be revised to indicate that commercial paper should no longer be reported as a loan in Schedule HC–B, but should be reported as a security in the FR Y–9C, Schedule HC–A, normally in item 4.a, ''U.S. debt securities,'' or item 5.a, ''Foreign debt securities.''

(4) Schedule HC–F—Off-Balance-Sheet Items:

(a) Part II, items 1.a and 1.b, ''Gross commitments to purchase'' and ''Gross commitments to sell'' when-issued securities, will be eliminated as separate items, but these commitments will continue to be reported in Schedule HC–F. Bank holding companies generally will report their when-issued commitments as off-balance-sheet derivative contracts in Part III, items 1 through 4. The notional amount of these commitments will be included in Part III, item 1.b, ''Forward contracts,'' generally in column A, ''Interest rate contracts,'' and in Part III, items 2 and 3 based on their purpose. The fair values of these commitments will be reported in Part III, item 4. However, bank holding companies that do not include these commitments as part of their disclosures about off-balance-sheet derivatives for other financial reporting purposes will be permitted to report such commitments in Part II, item 7, ''Other significant off-balance-sheet items.'' Each of these items will be subject to the existing reporting thresholds. The Glossary entry for ''when-issued securities transactions'' will be revised accordingly.

(b) Part II, item 5, ''Assets sold with recourse,'' will be revised. Existing items 5(a)(1) and 5(a)(2) will be combined into a single item 5(a)(1), the outstanding principal balance of first lien 1-to-4 family residential mortgages transferred with recourse; and proposed item 5(a)(2) will collect the amount of retained recourse exposure on balances collected in item 5(a)(1). Similarly, existing items 5.c. and 5.d. will be combined into a single item 5(b)(1), the amount of other financial assets (excluding small business obligations) that have been transferred with recourse; and proposed item 5(b)(2) will collect the amount of retained recourse exposure on balances collected in item 5(b)(1). Existing item 5(b)(1), ''Small business obligations sold with recourse,'' and 5(b)(2), ''Amount of recourse retained on small business obligations sold,'' will be retained and renumbered as items 5(c)(1) and 5(c)(2), respectively. In addition, the captions for revised items 5(c)(1) and 5(c)(2) will be expanded for clarity.

(c) Two items will be added (these new items will be reported in Part II, items 1.a and 1.b) in order to identify the extent of involvement by bank holding companies and their consolidated subsidiaries in credit derivative instruments. The first item (item 1.a) will be for the notional amount of all credit derivatives on which the reporting bank holding company or any of its consolidated subsidiaries is the guarantor. The second item (item 1.b) will be for the notional amount of all credit derivatives on which the reporting bank holding company or any of its consolidated subsidiaries is the beneficiary.

(5) Schedule HC–G—Memoranda:

(a) Item 16.a, ''Securities purchased under agreements to resell netted against securities sold under agreements to repurchase on Schedule HC,'' will be given its own line item and moved to the main body of Schedule HC–G. This item will be renumbered 7.b and existing item 7, ''Amount of cash items in process of collection netted against deposit liabilities in reporting Schedule HC,'' will be renumbered 7.a.

(b) Item 18, ''Excess residential mortgage servicing fees receivable,'' will be revised in response to FASB Statement No. 125 to refer to interest-only strips receivable. This item will be renumbered as item 18.a and revised to report all mortgage related interest-only strips receivable. A new item 18.b will be added for the reporting of interest-only strips receivable on all other financial assets. Consistent with FASB Statement No. 125, these strips receivable will be measured at fair value like available-for-sale securities. In addition, the term ''mortgage servicing rights'' will be revised to read ''mortgage servicing assets'' on Schedule HC—Consolidated Balance Sheet, and

Schedule HC–I—Risk-Based Capital, to conform with the nomenclature of FASB Statement No. 125.

(c) A new item (item 22) will be added to this schedule for ''Net unamortized realized deferred gains (losses) on off-balance-sheet derivative contracts included in assets and liabilities reported in Schedule HC.'' For available-for-sale securities reported on the balance sheet at fair value, this new item will include any deferred gains (losses) that are part of the amortized cost basis of such securities.

(6) Schedule HC–IC—Additional Detail on Capital Components: The separate maturity distributions for items 3.a through 3.f, ''Intermediate preferred stock with an original weighted average maturity of 5 years or more; subordinated debt with an original weighted average maturity of 5 years or more; or unsecured long-term debt issued by BHC prior to March 12, 1988 that qualified as secondary capital when issued'' will be replaced by a single item (new item 3) for the qualifying portion of each of these types of capital components that is included in Tier 2 capital.

(7) Schedule HI—Income Statement:

(a) Items 2(a)(1)(a) and 2(a)(1)(b) will be revised to collect interest expense in domestic offices on ''Time deposits of $100,000 or more'' and ''Time deposits of less than $100,000,'' respectively. Item 2(a)(1)(c), ''Interest on other deposits,'' will remain.

(b) In order to remain consistent with the revision to Schedule HC noted above, interest expense on mortgage indebtedness and obligations under capitalized leases, which is currently reported in item 2.e, ''Other interest expense,'' will be reported in item 2.c, ''Interest on borrowed funds (excluding subordinated notes and debentures).''

(c) Item 5.d, ''Other foreign transaction gains (losses),'' will be eliminated. Bank holding companies will now report these net gains (losses) consistently as part of either item 5.e, ''Other noninterest income,'' or item 7.c, ''Other noninterest expense.'' If the amount of ''Other foreign transaction gains (losses)'' is among the three largest amounts exceeding 10 percent of the amount reported in either item 5.e or 7.c, it will be itemized and described in either Memorandum item 6.c or 7.

Other Revisions Not Related to Call Report Changes

(1) Schedule HC—Consolidated Balance Sheet: Expand the caption of existing line item 23 to read ''Minority interest in consolidated subsidiaries and similar items'' and renumber the line item to 24. Existing line item 24, ''Other liabilities,'' will be moved and renumbered to item 23. In addition, the caption for existing line item 25 will be expanded to read ''Total liabilities and minority interest.''

(2) Schedule HC–E—Quarterly Averages: The reference above Schedule HC–E that reads ''Multibank holding companies with total consolidated assets of less than $150 million are not to complete Schedule HC–E'' will be deleted. All bank holding companies that complete the FR Y–9C must complete Schedule HC–E.

(3) Schedule HC–IC—Additional Detail on Capital Components: A new line item will be added to report the amount of cumulative preferred stock instruments issued out of subsidiaries, including special purpose subsidiaries, that are eligible for Tier 1 capital. Such instruments include securities that may be generically referred to as trust preferred securities. The new line item will be numbered 1(a)(3) and the caption will read: ''Cumulative preferred stock reported in minority interest in consolidated subsidiaries and similar items on Schedule HC.''

(4) Schedule HC–J—Risk-Based Capital Excluding Securities Affiliates: Two new line items, ''Tier 1 capital'' and ''Total risk-based capital,'' will be added to Part II and numbered as memorandum items 3 and 4, respectively. The caption for existing memorandum item 3, will be abbreviated to ''Average total assets'' and renumbered to memorandum item 6. Existing memorandum item 4, ''Total risk-weighted assets,'' will be renumbered to memorandum item 5.

(5) Schedule HI–A—Changes in Equity Capital: Memorandum item 2, ''Sale of equity commitment notes,'' and memorandum item 3, ''Sale of equity contract notes,'' will be deleted.

2. Report Title: Parent Company Only Financial Statements for Large Bank Holding Companies

Agency form number: FR Y–9LP.
OMB control number: 7100–0128.
Frequency: Quarterly.
Reporters: Bank holding companies.
Annual reporting hours: 30,819.
Estimated hours per response: Range from 2.0 to 13.5 hours.
Number of respondents: 1,716.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844 (b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the information in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company if the top tier bank holding company files the FR Y–9C. The following bank holding companies are exempt from filing the FR Y–9LP, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K.

The Federal Reserve has approved the following revisions to the FR Y–9LP to maintain consistency with the revisions made to the FR Y–9C, and are effective with the March 31, 1997, reporting date:

(1) Schedule PC—Parent Company Only Balance Sheet:

(a) The term ''mortgage servicing rights'' will be revised to read ''mortgage servicing assets'' on line item 7.a to conform with the nomenclature of FASB Statement No. 125.

(b) Item 19, ''Limited-life preferred stock (including related surplus),'' will be combined with existing item 16, ''Subordinated notes and debentures.''

3. Report Title: Parent Company Only Financial Statements for Small Bank Holding Companies

Agency form number: FR Y–9SP.
OMB control number: 7100–0128.
Frequency: Semiannual.
Reporters: Bank holding companies.
Annual reporting hours: 32,295.
Estimated hours per response: Range from 1.5 to 6.0 hours.
Number of respondents: 4,306.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844 (b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the information in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form.

The FR Y–9SP is a parent company only financial statement filed by one-bank holding companies with total consolidated assets of less than $150 million on a semiannual basis. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information,

information on intercompany transactions, and data for capital adequacy evaluation.

The Federal Reserve has approved the following revision to the FR Y–9SP, as previously proposed, to maintain consistency with the revisions made to the FR Y–9C, that is effective with the June 30, 1997, reporting date:

(1) Balance Sheet: Item 15, ''Limited-life preferred stock,'' will be combined with existing item 11, ''Long-term borrowings.''

4. Report Title: Quarterly Financial Statements of Nonbank Subsidiaries of Bank Holding Companies

Agency form number: FR Y–11Q.
OMB control number: 7100–0244.
Frequency: Quarterly.
Reporters: Bank holding companies.
Annual reporting hours: 6,845.
Estimated hours per response: Range from 3.0 to 8.0 hours.
Number of respondents: 276.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to most of the data in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form. FR Y–11Q, memorandum item 7.a, ''loans and leases past due 30 through 89 days'' and FR Y–11Q, memorandum item 7.d, ''loans and leases restructured and included in past due and nonaccrual loans'' are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

The FR Y–11Q is filed quarterly by the top tier bank holding companies for each nonbank subsidiary of a bank holding company with total consolidated assets of $150 million or more in which the nonbank subsidiary has total assets of 5 percent or more of the top-tier bank holding company's consolidated Tier 1 capital, or where the nonbank subsidiary's total operating revenue equals 5 percent or more of the top-tier bank holding company's consolidated total operating revenue. The report consists of a balance sheet, income statement, off-balance-sheet items, information on changes in equity capital, and a memoranda section.

The Federal Reserve has approved the following minor revisions to the FR Y–11Q, as previously proposed, that are effective with the March 31, 1997, reporting date:

(1) Balance Sheet and Off-Balance-Sheet:

(a) The term ''mortgage servicing rights'' will be revised to read ''mortgage servicing assets'' on line item 9.a to conform with the nomenclature of FASB Statement No. 125.

(b) A line item, ''trading liabilities,'' will be added to collect the amount of liabilities from the nonbank subsidiary's trading activities.

(c) Item 19, ''Limited-life preferred stock (including related surplus),'' will be combined with item 15, ''Borrowings with a remaining maturity of more than one year (including subordinated debt).''

(2) Income Statement: A line item, ''trading revenue,'' will be added to collect the net gain or loss on trading cash instruments and off-balance-sheet derivative contracts.

5. Report Title: Annual Financial Statements of Nonbank Subsidiaries

Agency form number: FR Y–11I.
OMB control number: 7100–0244.
Frequency: Annual.
Reporters: Bank holding companies.
Annual reporting hours: 6,560.
Estimated hours per response: Range from 0.4 to 8.0 hours.
Number of respondents: 2,050.
Small businesses are affected.
General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the report information, in whole or in part, can be requested in accordance with the instructions to the form. FR Y–11I, Schedule A, item 7.a, ''loans and leases past due 30 through 89 days'' and FR Y–11I, Schedule A, item 7.d, ''loans and leases restructured and included in past due and nonaccrual loans'' are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

The FR Y–11I is filed annually by the top tier bank holding companies for each of their nonbank subsidiaries that are not required to file a quarterly FR Y–11Q. The FR Y–11I report consists of similar balance sheet, income statement, off-balance-sheet, and change in equity capital information that is included on the FR Y–11Q. In addition, the FR Y–11I also includes a loan schedule to be submitted only by respondents engaged in credit extending activities.

The Federal Reserve has approved the following minor revisions to the FR Y–11I, as previously proposed, that are effective with the December 31, 1997, reporting date:

(1) Balance Sheet and Off-Balance-Sheet:

(a) A line item, ''trading liabilities,'' will be added to collect the amount of liabilities from the nonbank subsidiary's trading activities.

(b) Item 19, ''Limited-life preferred stock (including related surplus),'' will be combined with item 15, ''Borrowings with a remaining maturity of more than one year (including subordinated debt).''

Administrative Procedures Act

Because the data collections referred to herein are contained in a substantive rule, the Board has chosen to follow the more detailed notice and comment procedures of substantive rulemaking that are contained in the Administrative Procedures Act and the Paperwork Reduction Act. The Administrative Procedures Act (5 U.S.C. 553(d)) provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule. The substantive changes to this report are proposed to keep the reporting requirements consistent with those changes being incorporated in the Call Report to be filed by commercial banks as of March 31, 1997. In the past, bank holding companies have commented that reporting burden is minimized by keeping the Call Report and the bank holding company reports consistent and by implementing the changes on the same date. Furthermore, no comments were received addressing the effective date of the revisions approved by the Board and contained in this notice to the bank holding company reports. For these reasons, in accordance with 5 U.S.C. 553(d)(3), the Board finds there is good cause not to follow the 30-day notice requirements of 5 U.S.C. 553(d) and to make the implementation date for the revised FR Y–9C, FR Y–9LP, and FR Y–11Q reports effective for March 31, 1997.

Regulatory Flexibility Act Analysis

The Board certifies that the above bank holding company reporting requirements are not expected to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The reporting requirements for the small companies require significantly fewer items of data to be submitted than the amount of information required of large bank holding companies.

The information that is collected on the reports is essential for the detection of emerging financial problems, the assessment of a holding company's financial condition and capital adequacy, the performance of pre-inspection reviews, and the evaluation of expansion activities through mergers

and acquisitions. The imposition of the reporting requirements is essential for the Board's supervision of bank holding companies under the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, March 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8357 Filed 4–1–97; 8:45 am]

BILLING CODE 6210–01–P

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 16, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Denis L. and Sandra Kale; Osceola, Iowa; to acquire an additional 20.0 percent, for a total of 35.8 percent, of the voting shares of Osceola Bancorporation, Osceola, Iowa, and thereby indirectly acquire American State Bank, Osceola, Iowa.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Dolph Briscoe, Jr., Uvalde, Texas; to acquire an additional 58.41 percent, for a total of 59.18 percent of the voting shares of Zavala Bankshares, Incorporated, Crystal City, Texas, and thereby indirectly acquire Zavala County Bank, Crystal City, Texas.

Board of Governors of the Federal Reserve System, March 27, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8332 Filed 4-1-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. 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 April 25, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Penns Woods Bancorp, Inc., Williamsport, Pennsylvania; to acquire 6.39 percent of the voting shares of Columbia Financial Corporation, Bloomsburg, Pennsylvania, and thereby indirectly acquire First Columbia Bank & Trust Company, Bloomsburg, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105-1579:

1. Dartmouth Capital Group, Inc., Huntington Beach, California; Dartmouth Capital Group, L.P., Huntington Beach, California; Commerce Security Bancorp, Inc., Huntington Beach, California, and SDN Bancorp, Inc., Encinitas, California; to acquire and merge with Eldorado Bancorp, Irvine, California, and thereby indirectly acquire Eldorado Bank, Tustin, California.

In connection with this application, Applicants also have applied to acquire 11 percent of Eldorado Bancorp.

Board of Governors of the Federal Reserve System, March 27, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8330 Filed 4-1-97; 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 April 16, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Credit Suisse Group, Zurich, Switzerland, and Credit Suisse First Boston Corporation, New York, New York; to acquire 34.88 TradeWeb, L.L.C., New York, New York, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. Swiss Bank Corporation, Basel, Switzerland; to acquire 9.3 percent of TradeWeb, L.L.C., New York, New York, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 27, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8331 Filed 4-1-97; 8:45 am]

BILLING CODE 6210-01-F

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, April 17, 1997. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Terrace Room E of the Martin Building. The meeting will begin at 9:00 a.m. and is expected to continue until 4:00 p.m., with a lunch break from 1:00 p.m. until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Bank Regulatory Issues

The Bank Regulation Committee will discuss the potential effects of bank mergers and acquisitions on local communities; and will also discuss proposed interagency regulations to implement section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, which among other things provide guidance for determining whether a bank is reasonably helping to meet community credit needs served by interstate branches.

Electronic Banking and Electronic Disclosures

The Depository and Delivery Systems, Community Affairs and Housing, and Consumer Credit Committees will discuss recommendations for revisions to consumer regulations such as Regulations DD (Truth in Savings), E (Electronic Fund Transfers), B (Equal Credit Opportunity), and Z (Truth in Lending) to allow required disclosures and documentation to be provided to consumers electronically. The Depository and Delivery Systems Committee will also discuss industry and consumer issues involving electronic and home banking, and a Board report on the application of the Electronic Fund Transfer Act to electronic stored-value products.

Consumer Identifying Information

The Depository and Delivery Systems Committee will discuss findings in a Board report on the availability of consumer identifying information and financial fraud.

Recommendations To Simplify Mortgage Lending Disclosures

The Consumer Credit Committee will discuss possible recommendations for statutory amendments that may be required to simplify, consolidate, and streamline the provisions of Regulations Z (Truth in Lending Act) and X (RESPA) affecting home mortgage lending.

Governor's Report

Report by Federal Reserve Board Member Laurence H. Meyer on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum

Presentation by individual Council members on the economic conditions present within their industries or local economies.

Committee Reports

Committees will report on plans for 1997; in addition, the Consumer Credit Committee will discuss some issues to be addressed in Federal Reserve Board hearings on home equity lending (which will be held pursuant to the Home Ownership Equity Protection Act of 1994).

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Deanna Aday-Keller, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Aday-Keller, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, 202–452–3544.

Board of Governors of the Federal Reserve System, March 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8356 Filed 4–1–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Enrico Portuese, University of Pittsburgh

Based upon an investigation conducted by the University of Pittsburgh, information obtained by the Office of Research Integrity (ORI) during its oversight review, and Mr. Portuese's own admission, ORI found that Mr. Portuese, a former graduate student in the Department of Epidemiology, Graduate School of Public Health, University of Pittsburgh, engaged in scientific misconduct by fabricating research data in biomedical research supported by two grants from the National Institute of Diabetes and Digestive and Kidney Disease (NIDDK), National Institutes of Health (NIH).

Specifically, Mr. Portuese fabricated data in a study of angiotensin-converting enzyme polymorphism and complications from insulin-dependent diabetes mellitus. These fabricated data were included in an abstract that was submitted to the American Diabetes Association in January 1996; however, the abstract was not accepted, presented in public, or published.

In addition, Mr. Portuese fabricated genetic data on lipoprotein lipase polymorphisms as related to diabetes complications and risk factors. These fabricated data were included in tables prepared by Mr. Portuese and presented by him to his doctoral committee in October 1996. None of the fabricated data in question has been published, presented at a scientific meeting, or used in any grant applications.

Mr. Portuese has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning March 25, 1997:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Mr. Portuese's participation is proposed or

which uses him in any capacity on PHS supported research must concurrently submit a plan for supervision of his duties. The supervisory plan must be designed to ensure the scientific integrity of Mr. Portuese's research contribution. The institution must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–8347 Filed 4–1–97; 8:45 am]

BILLING CODE 4160–17–P

Food and Drug Administration

[Docket No. 94N–0011]

Barry D. Garfinkel; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) denies Dr. Barry D. Garfinkel's request for a hearing and issues a final order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Barry D. Garfinkel, 2854 Glenhurst Ave., St. Louis Park, MN 55416, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on its finding that Dr. Garfinkel was convicted of a felony under Federal law for conduct relating to the development or approval of a drug product and for conduct relating to the regulation of a drug product under the act.

EFFECTIVE DATE: April 2, 1997.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On November 19, 1993, the United States District Court for the District of Minnesota entered judgment against Barry D. Garfinkel for, among other counts, 3 counts of making a false statement in a matter within the jurisdiction of FDA, a Federal felony offense under 18 U.S.C. 1001. The basis for this conviction was Dr. Garfinkel's falsification of reports to conceal his failure to comply with the protocols of a clinical study of the drug Anafranil. Dr. Garfinkel's conviction was affirmed by the Eighth Circuit Court of Appeals on July 13, 1994.

As a result of this conviction, FDA served Dr. Garfinkel by certified mail on February 7, 1995, a letter proposing to issue an order under section 306(a) of the act (21 U.S.C. 335a(a)) permanently debarring him from providing services in any capacity to a person that has an approved or pending drug product application and offering him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (a)(2)(B) of the act, that Dr. Garfinkel was convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of a drug product. Dr. Garfinkel requested a hearing in a letter dated February 16, 1995. However, Dr. Garfinkel has not submitted any information or analyses to justify a hearing. Dr. Garfinkel's failure to raise any issues of fact constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment (21 CFR 12.22).

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act and under authority delegated to him (21 CFR 5.20), finds that Barry D. Garfinkel has been convicted of a felony under Federal law for conduct relating to the development or approval of a drug product and for conduct relating to regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing finding, Barry D. Garfinkel is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective April 2, 1997 sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Garfinkel, in any capacity, during his period of debarment, will be subject to a civil money penalty (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Dr. Garfinkel, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to a civil money penalty (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications or abbreviated antibiotic drug applications submitted by or with the assistance of Dr. Garfinkel during his period of debarment.

Dr. Garfinkel may file an application to attempt to terminate his debarment under section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 94N–0011 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–8272 Filed 4–1–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97M–0123]

Richard Wolf Medical Instruments Corp.; Premarket Approval of the Hulka Clip® Tubal Occlusion Device and Applicator System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Richard Wolf Medical Instruments Corp., Vernon Hills, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Hulka Clip® Tubal Occlusion Device and Applicator System. After reviewing the recommendation of the Obstetrics and Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 5, 1996, of the approval of the application.

DATES: Petitions for administrative review by May 2, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION: On December 30, 1987, Richard Wolf Medical Instruments Corp., Vernon Hills, IL 60061, submitted to CDRH an application for premarket approval of the Hulka Clip® Tubal Occlusion Device and Applicator System. The device is a contraceptive tubal occlusion device and is indicated for female sterilization (permanent contraception) by occluding the fallopian tubes.

On May 25, 1988, the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application subject to the submission of the data from the long-term animal carcinogenic studies demonstrating the safety of the device materials. On September 5, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 2, 1997 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 7, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–8274 Filed 4–1–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97M–0121]

Medtronic, Inc.; Premarket Approval of the Legend Plus® Pacing System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Legend Plus® Pacing System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 7, 1997, of the approval of the application.

DATES: Petitions for administrative review by May 2, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell J. Shein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517.

SUPPLEMENTARY INFORMATION: On July 21, 1993, Medtronic, Inc., Minneapolis, MN 55432, submitted to CDRH an application for premarket approval of the Legend Plus® Pacing System. The device consists of the following components: The Legend Plus® Pulse Generator Models 8446 and 8448; the Model 9790 and 9790C Programmers with the Model 9891 Baseline Software and the Model 9807 Software. The device system includes implantable pulse generators and associated programming hardware and software and is indicated for permanent ventricular or atrial pacing applications. Their use is indicated in the treatment of patients who may benefit from a pacing rate that changes in response to activity.

Ventricular indications include: (1) Chronic atrial flutter or fibrillation with slow ventricular response; (2) sinus node dysfunction or sick sinus syndrome (e.g., sinus bradycardia, sinus arrest and/or exit block, bradycardia-tachycardia syndrome, chronotropic insufficiency, etc.,); and (3) AV block.

Atrial indications include: Sinus node dysfunction or sick sinus syndrome (e.g., sinus bradycardia, sinus arrest and/or exit block, bradycardia-tachycardia syndrome, etc.,) with intact AV conduction.

On May 9, 1995, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On February 7, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested

person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 2, 1997 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 4, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–8273 Filed 4–1–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0017]

International Conference on Harmonisation; Draft Guideline on Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on the Limit Dose; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled ''Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on the Limit Dose.'' The draft guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline is intended to define the conditions under which it would be considered acceptable to use a ''limit dose'' for the high dose selection of nongenotoxic pharmaceuticals in long-term carcinogenicity studies. The draft guideline is an addendum to an earlier ICH guideline on criteria for establishing uniformity among international regulatory agencies for dose selection for carcinogenicity studies of human pharmaceuticals.

DATES: Written comments by June 2, 1997.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the draft guideline are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5473.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs FY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on November 6, 1996, the ICH Steering Committee agreed that a draft guideline entitled ''Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on the Limit Dose'' should be made available for public comment. The draft guideline is the product of the Safety Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Safety Expert Working Group.

The draft guideline is an addendum to an ICH final guideline published in the **Federal Register** of March 1, 1995 (60 FR 11278), entitled ''Guideline on Dose Selection for Carcinogenicity Studies of Pharmaceuticals.'' The draft guideline is intended to define the conditions under which it would be considered acceptable to use a ''limit dose'' for the high dose selection of nongenotoxic pharmaceuticals in long-term carcinogenicity studies.

Although not required, FDA has in the past provided a 75- or 90-day comment period for draft ICH guidelines. However, the comment period for this draft guideline has been shortened to 60 days so that comments may be received by FDA in time to be reviewed and then discussed at a July 1997 ICH meeting involving this guideline.

This draft guideline represents the agency's current thinking on dose selection for carcinogenicity studies of

pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before June 2, 1997, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this draft guideline is available via the Internet using the World Wide Web (WWW). To connect to the CDER home page, type http://www.fda.gov/cder and go to the ''Regulatory Guidance'' section.

The text of the draft guideline follows:

Addendum to ''Dose Selection for Carcinogenicity Studies of Pharmaceuticals''

Limit Dose

Under a defined set of conditions, it would be considered acceptable to limit the high dose administered for nongenotoxic pharmaceuticals in long-term carcinogenicity testing to a maximum, e.g., 1000 mg/kg/day in rats. This approach is only considered appropriate where the other accepted methods of dose selection have been evaluated and each has been considered not applicable based on scientific justification. Use of this alternative is considered appropriate when:

1. Neither a toxicity-based endpoint (MTD) nor a pharmacodynamic-based dose selection endpoint can be achieved; and

2. Determination of pharmacokinetic parameters needed to apply pharmacokinetic endpoints (the 25-fold ratio of rodent to human AUC or saturation of absorption) is not feasible or is inappropriate due to scientific or technical limitations.

Under such circumstances, it would be considered acceptable to use the maximum feasible dose (e.g., 5 percent of diet) for selection of the high dose. However, if in addition to meeting the criteria 1. and 2. above, the dose of the pharmaceutical for use in humans is 50 mg/day, a ''limit dose'' of 1000 mg/kg/day is considered acceptable for high dose selection (see NOTE). This endpoint is consistent with the principles set forth in the paragraphs on pharmacokinetic endpoints, achieving approximately the same margin of safety as specified there based on a mg/m^2 basis. For those pharmaceuticals used at maximum daily human doses higher or lower than 50 mg/day it is considered acceptable to limit the top dose in a rat carcinogenicity study proportionally.

NOTE

The dose of 50 mg/day in humans (leading to 1 mg/kg on an assumed human weight of 50 kg) is an approximate calculation based upon the following: A conversion from mg/kg to mg/m^2, the AUC ratio of 25, and a multiplication factor of 6 to account for the variance (approximately 95 percent confidence interval) for estimation of the AUC ratio from mg/m^2 ratio (rodent to human) (see, for the data, Contrera, et al., *Journal of the American College of Toxicology*, 14:1–10, 1995). A similar rationale and calculation can be applied for other rodent species.

Dated: March 25, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–8353 Filed 4–1–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel (SEP) meetings:

Name of SEP: General Clinical Research Centers.

Date: May 13–14, 1997.

Time: 8 a.m.

Place: Holiday Inn Iowa City, Johnson 1 & 2 Conference Room, 210 South Dubuque Street, Iowa City, IA 52240, (319) 337–4058.

Contact Person: Dr. Bela Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

Name of SEP: Biomedical Research Technology.

Date: May 27–29, 1997.

Time: 8 a.m.

Place: Doubletree Hotel, Conference Rooms—Twinbrook, Montrose, and Parklawn, 1750 Rockville Pike, Rockville, MD 20852, (301) 468–1100.

Contact Person: Dr. Sharon Moss, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

Purpose/Agenda: To evaluate and review grant applications.

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. 93.371, Biomedical Research Technology; 93.333, Clinical Research, National Institutes of Health, HHS)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8294 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Dates of Meeting: May 28–30, 1997.

Time: 8 a.m.–until adjournment.

Place of Meeting: Doubletree Hotel, Halpine Room, 1750 Rockville Pike, Rockville, MD 20892, Tel: (301) 468–1100.

Scientific Review Administrator: Dr. D. G. Patel, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0822.

Purpose/Agenda: To review and evaluate grant applications. The 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/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. 93.167 Research Facilities Improvement Program, National Institutes of Health, HHS)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8297 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; 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 Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 3, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: April 9, 1997.
Time: 4 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Gloria B. Levin, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

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.

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.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8293 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Review of a Center for Environmental and Rural Health.
Date: May 5–7, 1997.
Time: 7 P.M.
Place: College Station Hilton and Conference Center, 801 University Drive, College Station, Texas 77840–2116.
Contact Person: Dr. Linda K. Bass, National Institute of Environmental Health Sciences, P.O. Box 12233, MD 17–09, Research Triangle Park, NC 27709, (919) 541–1307.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Review of a Research Center in Environmental Health Sciences.
Date: June 10–12, 1997.
Time: 7 P.M.
Place: Hyatt Regency New Brunswick, New Brunswick, New Jersey 08901.
Contact Person: Dr. Ethel B. Jackson, National Institute of Environmental Health Sciences, P.O. Box 12233, MD 17–09, Research Triangle Park, NC 27709, (919) 541–7826.
Purpose/Agenda: To review and evaluate 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 the discussions 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 Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8295 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Health

National Institute of Mental Health; 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 Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Special Emphasis Panel.
Date: April 8, 1997.
Time: 1 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Gloria B. Levin, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1367.

Committee Name: National Institute of Mental Special Emphasis Panel.
Date: April 15, 1997.
Time: 1 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Gloria B. Levin, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1367.

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.

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.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282.)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8296 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel meetings:

Name of SEP: Cross National Conference on Health and Retirement Data (Teleconference).
Date of Meeting: April 11, 1997.
Time of Meeting: 1:30 p.m. to adjournment.
Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.
Purpose/Agenda: To evaluate and review a conference grant application.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Third Colorado Conference on Elderly Migration (Teleconference).
Date of Meeting: April 17, 1997.
Time of Meeting: 1:30 p.m. to adjournment.
Place of Meeting: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, Maryland 20892.
Purpose/Agenda: To evaluate and review a conference grant application.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: The Development and Maintenance of Aged, Calorie-Restricted Mice and Rates. (Teleconference).
Date of Meeting: April 28, 1997.
Time of Meeting: 1:00 p.m. to adjournment.
Place of Meeting: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, Maryland 20892.
Purpose/Agenda: To evaluate and review a contract proposal.
Contact Person: Dr. Arthur D. Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

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. 93.866, Aging Research, National Institutes of Health)

Dated: March 27, 1997.

LaVerne Y. Stringfield.

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8298 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; 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 Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting.

Name of SEP: An In Vitro Cell Culture Model for Hepatitis C Virus Propagation (Telephone Conference Call).

Date: April 14, 1997.

Time: 1:00 p.m.

Place: Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C01, Bethesda, MD 20892, (301) 496–2550.

Contact Person: Dr. Vassil Georgiev, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, MD 20892, (301) 496–8206.

Purpose/Agenda: To evaluate a grant application.

The 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/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. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8299 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; 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 Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Neurotoxicology Conference Grants (Telephone Conference Call).

Date: April 7, 1997.

Time: 1 P.M.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

The 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. Grant 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.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8302 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; 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 on Aging Special Emphasis Panel meetings.

Name of SEP: Wealth, Savings & Financial Security Among Older Households.

Dates of Meeting: April 9–10, 1997.

Times of Meeting: April 9—7 p.m. to recess, April 10—9 a.m. to adjournment.

Place of Meeting: Bethesda Hyatt Regency, 7400 Wisconsin Avenue, Bethesda, Maryland 20814.

Purpose/Agenda: To evaluate and review a program project grant application.

Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: Small Grants in Economics and Demography (Teleconference).

Date of Meeting: April 15, 1977.

Time of Meeting: 1:30 p.m. to adjournment.

Place of Meeting: Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, Maryland 20892.

Purpose/Agenda: To review small grant applications.

Contact Person: Dr. Paul Lenz, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

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.

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. 93.866, Aging Research, National Institutes of Health)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8303 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; 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 Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Sleep and Regulatory Integration: Implication for SIDS.

Date: April 7–8, 1997.

Time: April 7—7 p.m.–10 p.m., April 8—8:30 a.m. - adjournment.

Place: Cabana Hotel, 4290 El Camino REAL, Palo Alto, California, 94306.

Contact Person: Gopal Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review grant applications.

The 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. The discussions of this application 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.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8304 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 17, 1997.

Time: 2 p.m..

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

The 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/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.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8305 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: April 25, 1997.

Time: 8 a.m.–5 p.m.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Melissa Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion 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. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8307 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 20, 1997.

Time: 8 a.m.

Place: Holiday Inn Boston-Airport, 225 McClellan Highway, East Boston, MA 02128.

Contact Person: Dr. Paul Sheehy, Scientific Review Branch, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate 1 grant application.

The 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/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. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8308 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: Glycolipid Protein Anchors.

Date: April 16–18, 1997.

Time: 7:30 p.m.

Place: Ramada Inn, 13940 Brook Park Road, Cleveland, Ohio 44135.

Contact Person: William E. Elzinga, Ph.D., Scientific Review Administrator, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8895.

Purpose/Agenda: To review and evaluate grant 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/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: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8309 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; 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 Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: A Program of Investigation Into Fragile X Syndrome.
Date: April 17–18, 1997.
Time: April 17—8 p.m.–10 p.m., April 18—8:30 a.m.–adjournment.
Place: Terrace Gardens Hotel, 3405 Lenox Road, NE., Atlanta, Georgia 30326.
Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.
Purpose/Agenda: To evaluate and review grant applications.

The 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. The discussions of this application 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. [93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8310 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on April 7–8, 1997.

The meeting on April 8 will be open to the public from 9 a.m. to 3 p.m. in the Board Room of the Library, 8600 Rockville Pike, Bethesda, Maryland, for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Lipman at 301–496–2475.

In accordance with provisions set forth in section 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on April 7 from 7 p.m. to approximately 10 p.m., at the Bethesda Hyatt Hotel, and on April 8, from 3 p.m. to approximately 5 p.m., in the Board Room of the National Library of Medicine, for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8300 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: April 10–12, 1997.
Time: 8 p.m.
Place: Westin Hotel, Waltham, MA.
Contact Person: Dr. David Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435–1038.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 18, 1997.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 18, 1997.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Purpose/Agenda: To Review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: April 4, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

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.

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 Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8301 Filed 4–1–97; 8:45 am]

BILLING CODE 4410–01–M

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: April 1, 1997.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4204, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4204, Bethesda, Maryland 20892, (301) 435–1221.

Name of SEP: Biological and Physiological Sciences.
Date: April 3, 1997.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4204, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4204, Bethesda, Maryland 20892, (301) 435–1221.

Name of SEP: Biological and Physiological Sciences.
Date: April 7, 1997.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 6154, Telephone Conference.

Contact Person: Dr. David Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435–1038.

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 grant review and funding cycle.

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 Nos. 93.306, 93.333, 93.337, 93.393–93,396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–8306 Filed 4–1–97; 8:45 am]

BILLING CODE 4140–01–M

Administration for Children and Families

Refugee Resettlement Program: Proposed Allocations to States of FY 1997 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Notice of proposed allocations to States of FY 1997 funds for refugee[1] social services.

SUMMARY: This notice establishes the proposed allocations to States of FY 1997 funds for social services under the Refugee Resettlement Program (RRP). In the final notice, allocation amounts could be adjusted slightly based on final adjustments in FY 1996 arrivals in some States. This notice reflects the decision by Congress to move the $19,000,000 Cuban and Haitian entrant set-aside from targeted assistance to social services. In addition, Congress provided for $11,079,000 under social services for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult.

EFFECTIVE DATE: Comments on the proposed allocations contained in this notice must be received by May 2, 1997.

ADDRESSES: Address written comments, in duplicate, to:

Toyo Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, Director, Division of Refugee Self-Sufficiency, (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Amounts For Allocation

The Office of Refugee Resettlement (ORR) has available $110,882,000 in FY 1997 refugee social service funds as part of the FY 1997 appropriation for the Department of Health and Human Services (Pub. L. 104–208).

The FY 1997 House Appropriations Committee Report (H.R. Rept. No. 104–659) reads as follows with respect to social services funds:

> Funds are distributed by formula as well as through the discretionary grant making process for special projects. In addition, the Committee has transferred activities previously funded through the Targeted Assistance program to the Social Services program. The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set-aside $11,079,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance.
>
> The Committee recommends that ORR give special consideration in allocating grant funding to applicants providing rehabilitation services for victims of physical and mental torture. The Committee requests that ORR be prepared to testify regarding its activities in support of victims of torture during the fiscal year 1998 budget hearings.

The FY 1997 Senate Appropriations Committee Report (S. Rept. No. 104–368) further clarifies Congress' intent regarding funding for services for victims of torture as follows:

> The Committee notes the recent request for proposals to provide mental health services to victims of torture, and recommends that the Office of Refugee Resettlement, to the extent possible, devote increased resources to that program in fiscal year 1997.

The Conference Report on Appropriations (H. Rept. No. 104–863) agrees with the House and Senate Reports regarding the allocation of social services.

The Director of the Office of Refugee Resettlement (ORR) proposes to use the $110,882,000 appropriated for FY 1997 social services as follows:

- $68,682,550 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $12,120,450 will be used to fund continuation grants and new grants through various discretionary grant announcements.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds would be awarded under a discretionary grant announcement that will be issued separately setting forth application requirements and evaluation criteria.
- $11,079,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. A grant announcement will be issued separately which sets forth application requirements and evaluation criteria.

Refugee Social Service Funds

The population figures for the social services allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director proposes to allocate $68,682,550 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1996 (including a floor amount for

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the ''funds available for a fiscal year for grants and contracts (for social services) * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.''

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, ''Allocation Amounts'' (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then —

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

Next year ORR plans to re-examine the floor formula to determine whether it should be modified or eliminated in FY 1998.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the current requirements of 45 CFR Part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, under 45 CFR 400.152, States may not provide services funded by this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years).

In accordance with 45 CFR 400.147, States are required to provide services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) all newly arriving refugees during their first year in the U.S., who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. No. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, States are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See 45 CFR 400.79 and 400.156(g).) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) A determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family.

Reflecting section 412(a)(1)(A)(iv) of the INA, and in keeping with 45 CFR 400.145, States must ensure that women have the same opportunities as men to participate in all services funded under this notice, including job placement services. In addition, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services for children. For an employed refugee, day care funded by refugee social service dollars should be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, social service funds must be used primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with 45 CFR 400.156, refugee social services must be provided, to the maximum extent feasible, in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population.

Services funded under this notice must be refugee-specific services which

are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job skills training, on-the-job training, or English language training, however, need not be refugee-specific.

English language training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

When planning State refugee services, States must take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative.

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of mutual assistance associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (60 FR 15766, March 27, 1995). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Funding to MAAs

ORR no longer provides set-aside funds to refugee mutual assistance associations as a separate component under the social service notice; instead we have folded these funds into the social service formula allocation to States. Elimination of the MAA set-aside, however, does not represent any reduction in ORR's commitment to MAAs as important participants in refugee resettlement. ORR believes that the continued and/or increased utilization of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, ORR expects States to use MAAs as service providers to the maximum extent possible. ORR strongly encourages States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served. ORR expects States to continue to assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients.

States may use a portion of their social service grant, either through contracts or through the use of State/county staff, to provide technical assistance and organizational training to strengthen the capability of MAAs to provide employment services, particularly in States where MAA capability is weak or undeveloped.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

II. [Reserved for Discussion of Comments in Final Notice]

III. Allocation Formulas

A. Allocation Formula

Of the funds available for FY 1997 for social services, $68,682,550 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1996, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

V. Basis of Population Estimates

The population estimates for the proposed allocation of funds in FY 1997 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1996, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, and Cuban and Haitian entrants.

For fiscal year 1997, ORR's proposed formula allocations for the States for social services are based on the numbers of refugees and Amerasians who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1994, 1995, and 1996, based on final arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1993, and September 30, 1996, who are thought to be living in each State as of October 1, 1996.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1996. The total migration

reported by each State was summed, yielding in-and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

With regard to Havana parolees, in the absence of reliable data on this population, we are crediting each State that received entrant arrivals during the 3-year period from FY 1994–FY 1996 with a prorated share of the 9,494 parolees reported by the INS to have come to the U.S. directly from Havana in FY 1996. In addition, we have credited each State with the same share of FY 1995 Havana parolees that they were credited with in the final FY 1995 social service notice. The proposed allocations in this notice reflect these additional parolee numbers.

If a State does not agree with ORR's population estimate and wishes ORR to reconsider its population estimate, it should submit written evidence to ORR, including a list of refugees identified by name, alien number, date of birth, and date of arrival. Listings of refugees who are not identified by their alien numbers will not be considered. Such evidence should be submitted separately from comments on the proposed allocation formula no later than 30 days from the date of publication of this notice and should be addressed to: Loren Bussert, Office of Refugee Resettlement, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Telephone: (202) 401–4732.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1996, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3); total refugee/entrant population, (col. 4); the proposed formula amounts which the population estimates yield (col. 5); and the proposed allocation amounts after allowing for the minimum amounts (col. 6).

These population estimates and proposed allocation amounts are intended to be as close to the final figures as was possible at the time they were developed. However, revisions may need to be made to reflect final adjustments in FY 1996 arrival data in some States.

V. Proposed Allocation Amounts

Funding will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations. The following amounts are proposed for allocation for refugee social services in FY 1997:

TABLE 1—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS (FY 1994–1996) OF STATES PARTICIPATING IN THE REFUGEES PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1997

State	Refugees (1)	Entrants (2)	Havana parolees [1] (3)	Total population (4)	Proposed formula amount (5)	Proposed allocation (6)
Alabama	497	117	40	654	$128,901	$128,901
Alaska [2]	0	0	0	0	0	0
Arizona	4,243	569	221	5,033	979,298	979,298
Arkansas	259	14	4	277	354,030	94,382
California [3]	62,225	1,209	487	63,924	12,348,802	12,348,802
Colorado	3,633	12	5	3,650	204,323	204,323
Connecticut	2,523	354	126	3,003	586,614	586,614
Delaware	84	4	2	90	17,367	75,000
Dist. of Columbia	1,758	14	5	1,777	343,285	343,285
Florida	13,914	33,334	15,135	62,383	12,084,440	12,084,440
Georgia	9,169	282	106	9,557	1,848,799	1,848,799
Hawaii	518	1	0	519	100,149	100,149
Idaho	1,225	1	1	1,227	236,575	236,575
Illinois	11,797	480	166	12,443	2,411,678	2,411,678
Indiana	1,016	17	7	1,040	200,877	200,877
Iowa	3,578	6	2	3,586	692,166	692,166
Kansas	1,848	18	7	1,873	361,617	361,617
Kentucky [4]	2,692	465	137	3,294	650,485	650,485
Louisiana	1,718	294	118	2,130	414,489	414,489
Maine	648	1	0	648	125,234	125,234
Maryland	4,802	180	72	5,054	977,368	977,368
Massachusetts	8,356	212	85	8,653	1,672,236	1,672,236
Michigan	7,655	336	117	8,108	1,571,894	1,571,894
Minnesota	9,645	26	10	9,681	1,868,481	1,868,481
Mississippi	102	41	16	159	31,260	75,000
Missouri	5,154	32	13	5,199	1,003,612	1,003,612
Montana	188	0	0	188	36,277	76,629
Nebraska	1,707	38	9	1,754	340,005	340,005
Nevada [4]	888	1,025	398	2,311	460,415	460,415
New Hampshire	731	1	0	732	141,250	141,250
New Jersey	5,023	1,426	589	7,038	1,371,596	1,371,596
New Mexico	629	1,124	463	2,216	438,417	438,417
New York	49,240	1,399	569	51,208	9,896,023	9,896,023
North Carolina	3,024	49	15	3,088	597,227	597,227
North Dakota	1,033	4	2	1,039	200,491	200,491
Ohio	4,286	62	18	4,366	844,608	844,608
Oklahoma	1,009	19	7	1,035	200,105	200,105
Oregon	4,827	522	176	5,525	1,078,675	1,078,675
Pennsylvania	8,490	332	104	8,926	1,731,862	1,731,862
Rhode Island	524	7	2	533	103,043	103,043
South Carolina	469	8	2	479	92,816	100,000

TABLE 1—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS (FY 1994–1996) OF STATES PARTICIPATING IN THE REFUGEES PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1997—Continued

State	Refugees (1)	Entrants (2)	Havana parolees [1] (3)	Total population (4)	Proposed formula amount (5)	Proposed allocation (6)
South Dakota	817	0	0	817	157,652	157,652
Tennessee	3,188	225	63	3,476	678,658	678,658
Texas	13,685	1,302	501	15,488	3,007,940	3,007,940
Utah	1,903	1	0	1,904	367,406	367,406
Vermont	709	0	0	709	136,812	136,812
Virginia	5,202	253	96	5,551	1,075,009	1,075,009
Washington	17,006	62	18	17,086	3,299,124	3,299,124
West Virginia	24	1	0	25	4,824	75,000
Wisconsin	3,849	22	8	3,879	748,989	748,898
Wyoming [2]	0	0	0	0	0	0
Total	287,513	45,901	19,922	353,336	68,423,113	68,682,550

[1] Includes Havana Parolees (HP's) for FY 1995 and FY 1996. For FY 1995, Florida' HP's (8240) were based on actual data while HP's in other States (2188) were prorated based on the States' proportion of the three year entrant population. For FY 1996, 9494 HP's were prorated to all States based on the States' proportion of the three year entrant population in the U.S.

[2] Alaska and Wyoming no longer participate in the Refugee Program.

[3] A portion of the California allocation is expected to be awarded to continue a Wilson/Fish project in San Diego.

[4] The allocation for Kentucky and Nevada is expected to be awarded to continue a Wilson/Fish project.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: March 26, 1997.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 97–8190 Filed 4–1–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–48]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: June 2, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451–7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Luton, telephone number (202) 708–2556 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for Mortgage Insurance (HUD–93201).

OMB Control Number: 2502–0141.

Description of the need for the information and proposed use: This notice requests to extend the use of Form HUD–93201 for Cooperative and Condominium Housing and its supporting exhibits that make up the basic application package for FHA-insurance on multifamily projects as authorized by Sections 213, 221 and 234 of the National Housing Act. These project applications are submitted by project sponsors seeking feasibility determinations and by mortgagees applying for a conditional or firm commitment for FHA mortgage insurance.

Agency forms, if applicable: HUD–93201, HUD–92010, HUD–93433, Form 2530, Form 2329 and HUD–935.2.

Members of affected public: An estimation of the total numbers of hours needed to prepare the information collection is 4, the number of respondents is 15, frequency of responses is varied.

Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 24, 1997.

Stephanie A. Smith,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 97–8290 Filed 4–1–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Kevin W. Markham, Environmental Services, Inc., Raleigh, North Carolina, PRT–826915.

The applicant requests a permit to take (survey for, handle for examination and identification, and collect and retain dead shells) the dwarf-wedge mussel, *Alasmidonta heterodon*, Appalachian elktoe, *Alasmidonta raveneliana*, Tar River spinymussel, *Elliptio steinstansana*, Carolina heelsplitter, *Lasmigona decorata*, and little-wing pearlymussel, *Pegias fabula* throughout these species' ranges in North Carolina for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by May 2, 1997.

Documents and other information submitted with this application 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 to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: March 27, 1997.

C. Monty Halcomb,

Acting Regional Director.

[FR Doc. 97–8340 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[UT–060–05–3800–006, UTU–72499]

Notice of Availability of Record of Decision for SUMMO USA Corporation; Lisbon Valley Open Pit Copper Mine in San Juan County, Utah

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of availability of the record of decision prepared for SUMMO USA Corporation's Lisbon Valley Open Pit Copper Mine in San Juan County, Utah.

SUMMARY: Pursuant to Section 202 of the National Environmental Policy Act of 1969, an Environmental Impact Statement (EIS) has been prepared, under third party contract, by the Bureau of Land Management (BLM), Moab District Office. The EIS was prepared to analyze impacts and alternatives for SUMMO USA Corporation's proposed Lisbon Valley Open Pit Copper Mine and Heap Leaching Operation. The proposed project would occur on 1103 acres of federal, state, and private lands located in San Juan County, Utah. The Record of Decision (ROD) was signed by the Utah BLM State Director on March 26, 1997, approving the proposed project and incorporating mitigating modifications analyzed under the alternatives

Copies of the ROD can be obtained from the Moab District Office at 82 East Dogwood Avenue, Moab, Utah, or by calling (801) 259–6111 and requesting a copy of the document. Additionally, a copy of the ROD will be mailed to individuals, agencies or companies that commented during the scoping process, or on the Draft and Final EIS.

DATES: Parties adversely affected by the Record of Decision have 30 days, from the date of publication of this notice, to file a Notice of Appeal in the office which issued this decision (43 CFR 4.411 and 4.413). The decision to approve the mining operation is in full force and effect, effective on the date of this publication of the Notice of Availability of the Record of Decision. A petition for a stay of the decision must be filed in accordance with the above cited regulations.

ADDRESSES: A notice of Appeal should be addressed to: Bill Lamb, Utah State Director, Bureau of Land Management, P.O. Box 45155, 324 South State Street, Room 301, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT:

Lyn Jackson, Project Coordinator, Moab District Office, Bureau of Land Management, 82 East Dogwood Avenue, Moab, Utah 84532, (801) 259–6111.

Dated: March 26, 1997.

Brad Palmer,

Acting District Manager, Moab District.

[FR Doc. 97–8313 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–930–1990–00–24 1A]

Mining Claims Under the General Mining Laws; Surface Management: Forms of Legal Financial Guarantees Allowable Under Utah State Law

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Notice of Legal Financial Guarantees Allowable Under Utah State Law.

SUMMARY: The Bureau of Land Management (BLM) amended the surface management regulations at 43 CFR subpart 3809 on February 28, 1997 (62 FR 9093). The amendment requires each BLM State Director to consult with the appropriate State authorities to determine which financial instruments in section 43 CFR 3809.1–9(k) are allowable under State law. Utah State law allows surety bonds, cash, irrevocable letters of credit, and certificates of deposit as forms of financial guarantees related to reclamation requirements.

EFFECTIVE DATE: This list is effective April 2, 1998.

ADDRESSES: Inquiries should be sent to the Bureau of Land Management, Utah State Office, Division of Natural Resources, Solid Mineral Resources Group, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Terry McParland, (801) 539–4026.

ALLOWABLE FINANCIAL INSTRUMENTS: The Bureau of Land Management has consulted with appropriate Utah State authorities to determine which of the financial instruments in section 3809.1–9(k) are allowable under Utah State law to satisfy the financial assurance requirements related to mining reclamation requirements. The State of Utah, Division of Oil, Gas, and Mining 2 has determined the following forms of financial guarantee are allowable under Utah State law: surety bonds, cash, irrevocable letters of credit, and certificates of deposit.

Dated: March 27, 1997.

Ted Stephenson,

Acting State Director.

[FR Doc. 97–8338 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–DQ–P

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar

National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday, April 25, 1997, at the Inyo County Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site. Members of the Commission are as follows:

Sue Kunitomi Embrey, Chairperson

William Michael, Vice Chairperson

Keith Bright

Martha Davis

Ronald Izumita

Gann Matsuda

Vernon Miller

Mas Okui

Glenn Singley

Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after May 31, 1997. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, California 93526.

Dated: March 24, 1997.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 97–8430 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Josephine County Water Management Improvement, Fish Passage Improvements, Savage Rapids Dam, Oregon

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of record of decision.

SUMMARY: This notice is issued under authority of the National Environmental Policy Act of 1969. In 1988 Reclamation initiated the Josephine County Water Management Improvement Study in response to requests by Josephine County and the Grants Pass Irrigation District (GPID). A record of decision (ROD), in which Reclamation concluded its study of alternatives to improve salmon and steelhead passage, was signed on March 14, 1997. The ROD identified the Preferred Alternative, described in the planning report/final environmental statement (PR/FES), as the most efficient and environmentally sound alternative for providing safe salmon and steelhead passage at Savage Rapids Dam. Reclamation recommended the Preferred Alternative of the GPID, but it appears that they now wish to pursue a different course of action. In view of this, Reclamation will not pursue congressional action to authorize or fund implementation of the Preferred Alternative identified in the PR/FES.

ADDRESSES: Copies of the ROD may be requested from the following locations:

Bureau of Reclamation, Pacific Northwest Region, 1150 North Curtis Road, Boise, ID 83706–1234

Bureau of Reclamation, Lower Columbia Area Office, 825 NE Multnomah, Suite 1110, Portland, OR 97232

FOR FURTHER INFORMATION CONTACT: J. Eric Glover (503) 872–2795.

SUPPLEMENTARY INFORMATION: The primary objectives of the Josephine County Water Management Improvement Study were to (1) identify a permanent solution to salmon and steelhead passage problems at Savage Rapids Dam and (2) help resolve conflicts over water uses in Josephine County. A PR/FES focusing only on salmon and steelhead passage concerns at the dam and the associated diversion facilities was filed on August 30, 1995. In addition to the no action alternative, two action alternatives were evaluated in the PR/FES. The Pumping Alternative was identified as the Preferred Alternative and consists of three parts: (1) Replacement of GPID pumping and diversion facilities at the dam with two new pumping plants, one each on the north and south sides of the river; (2) removal of the dam and appurtenant structures and restoration of the sites; and (3) forgiveness of remaining debt to the Federal Government owed by GPID.

Dated: March 20, 1997.

John W. Keys, III,

Regional Director.

[FR Doc. 97–8312 Filed 4–1–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation; Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: At OPIC's request, the Office of Management and Budget (OMB) is reviewing this information collection for emergency processing for 90 days.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before June 2, 1997.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: New form.

Title: Small Business Application for Political Risk Investment Insurance

Form Number: OPIC 223.

Frequency of Use: Once per investor per project.

Type of Respondents: Small business or other institutions qualifying as small business under OPIC's definition (except farms); individuals qualifying as small business under OPIC's definition.

Standard Industrial Classification Codes: All.

Description of Affected Public: Small U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per project.

Number of Responses: 50 per year.

Federal Cost: $750 per year.

Authority for Information Collection: Section 231 and 234(a), 239(d) and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The small business application is the principal document used by OPIC to determine the small business investor's and project's eligibility, assess the environmental impact developmental effects of the project measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: March 26, 1997.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–8292 Filed 4–1–97; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–396]

Certain Removable Electronic Cards and Electronic Card Reader Devices and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 11, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Innovatron S.A., 1 rue Danton, Paris, France 75006. On March 12, 1997, the Commission extended by two weeks the thirty-day period for determining whether to institute an investigation based on the complaint. An amended complaint was filed on March 14, 1997 and a supplement was filed on March 20, 1997. The amended complaint, as supplemented, alleges violations 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 removable electronic cards and electronic card reader devices and products containing same that infringe claim 8 of U.S. Letters Patent 4,404,464.

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 amended 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, SW., Room 112, Washington, DC 20436, telephone 202–205–1802. 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: William F. Heinze, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on March 26, 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 removable electronic cards or electronic card reader devices or products containing same by reason of infringement of claim 8 of U.S. Letters Patent 4,404,464, 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—Innovatron S.A., 1, rue Danton, Paris, France 75006

(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: Thomson Multimedia, S.A., 9 Place des Vosges, La Defense Cedex, Paris, France

Thomson Consumer Electronics, Inc., 10330 North Meridian Street, Indianapolis, Indiana 46290

(c) William F. Heinze, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–P, Washington, DC 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 CFR 210.13. Pursuant to §§ 201.16(d) and 210.13(a) of the Commission's rules, 19 CFR 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: March 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–8363 Filed 4–1–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–362]

U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the third annual report.

EFFECTIVE DATE: March 25, 1997.

SUMMARY: Following receipt on March 31, 1995, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–362, U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy (60 FR 24884). The USTR letter requested that the Commission prepare its first annual report under this investigation not later than November 15, 1995, and provide annually thereafter for a period of 5 years. The first report was submitted on November 15, 1995 (USITC publication 2938 issued in January 1996). The second annual report was submitted on October 4, 1996 (USITC publication 3000 issued in October 1996). The third annual report will be submitted by October 31, 1997.

FURTHER INFORMATION CONTACT: Constance A. Hamilton, Office of Economics (202-205–3263), or William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

Section 134 of the Uruguay Round Agreements (URAA), Pub. L. 103–465, directs the President to develop a comprehensive trade and development policy of the countries of Africa. The President is also to report to the Congress annually over the next 5 years on the steps taken to carry out that mandate. The Statement of Administrative Action that was approved by the Congress with the URAA states that the President will direct the International Trade Commission to submit within 12 months following the enactment of the URAA into law, and annually for the 5 years thereafter, a report providing (1) an analysis of U.S.-African trade flows, and (2) an assessment of any effects of the Uruguay Round Agreements, and of U.S. trade and development policy for Africa on such trade flows.

The third annual report on U.S.-African trade flows and effects of U.S. trade and development policy will contain the following information:

(1) An update of U.S.-African trade and investment flows for the latest year available, including both overall trade and trade in the following major sectors: agriculture, forest products, textiles and apparel, footwear, energy, chemicals, minerals and metals, machinery, transportation equipment, electronics technology, miscellaneous manufactures, and services. It also requested that the basic trade flow information be provided for U.S. trade with the following regional trade groups: the Southern African Customs Union (SACU), the Southern African Development Community (SADC), Western African Economic and Monetary Union (WAEMU), and Common Market for Eastern and Southern Africa (COMESA).

(2) An identification of major developments in the World Trade Organization and in U.S. trade/economic activities which significantly affect U.S.-Africa trade and investment flows by sector during the last year. Similarly, to the extent possible, changing trade and economic activities within African countries that have a significant impact should be highlighted.

(3) Progress in regional integration in Africa.

As requested by the USTR, the Commission will limit its study to the 48 countries in Sub-Saharan Africa.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the third annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat a confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than June 13, 1997. All submissions should be addressed to the Secretary, United Sates International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: March 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–8362 Filed 4–1–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 5–97]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Tuesday, April 15, 1997, 9:00 a.m.

Subject Matter: 1. Hearings on the record on objections to Proposed Decisions in the following claims against Albania:

ALB–005—Mile M. Kasem
ALB–010—Peter Panos
ALB–017—Afron Cheli, et al.
ALB–019—Vassil Tamburi
ALB–032, ALB–034, ALB–035, and ALB–043—Cleopatra Karselas, Eftalia Maliou, George Karselas, and Olga Dntule
ALB–037—Jani M. Papa, et al.
ALB–042—Xhani Femera, et al.
ALB–054—Dude Prifti
ALB–092—Thanas A. Laske
ALB–094—Sulejman Lelo
ALB–112—Demirhan Bace
ALB–113—Katerina Berberi
ALB–115—Theodhora Delle
ALB–118, ALB–139—Evdhoksi Tollko, Sotiraq Pani
ALB–119, ALB–161—Aleksandra Filipi, Anesti Filipi, et al.
ALB–122—Vaios Karagiannis
ALB–123—Thomas S. Kalyvas
ALB–124—Elias Kalyvas
ALB–141—Mitre Sofroni
ALB–150—Sotiraq Qano
ALB–151—Ismet Rusi
ALB–157—Victoria Gallani
ALB–173—Marigo Tellios, et al.
ALB–179—Thanas Dudo
ALB–187—Helena Liolin
ALB–238—Edward Mehmet
ALB–268—Philip Stevens, et al.

ALB–289—Aleksandra Pepo
ALB–304—Perikli Papa
ALB–307—Odise Lakuriqi, et al.

2. Oral hearings on objections to Proposed Decisions in the following claims against Albania:

9:30 a.m. ALB–178—Hariklia Zoto, et al.
10:00 a.m. ALB–064—Fejzi Domni
10:30 a.m. ALB–093—Jorgo Stoli
11:00 a.m. ALB–117—James Elias
11:30 a.m. ALB–146—Constance Zotos, et al.
12:00 p.m. ALB–247—Stephen Pantos
12:30 p.m. ALB–167—Peter Panajoti

Status: Open.

Subject matter not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, March 28, 1997.

David E. Bradley,

Chief Counsel.

[FR Doc. 97–8487 Filed 3–31–97; 11:09 am]

BILLING CODE 4410–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–037]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee Meeting.

DATES: May 12, 1997, 8:30 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW, MIC 7 A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Frank M. Sulzman, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public from 1:00 p.m. to 2:00 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on Committee membership. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Update: Office of Life & Microgravity Sciences and Applications, Life Sciences Division
—NRC Radiation Report
—Evolutionary Biology
—Closed Session on Membership
—Discussion of Committee Findings and Recommendations
—Subcommittee Report Review

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 26, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–8429 Filed 4–1–97; 8:45 am]

BILLING CODE 7510–01–M

[Notice 97–036]

Notice of Proposed Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Link Manufacturing, Inc., of Sioux Center, Iowa 51250, has applied for an exclusive patent license to practice the invention described and claimed in U.S. Patent No. 5,464,301, entitled ''Rotary Latch,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. 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 June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–1003.

Dated: March 27, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–8428 Filed 4–1–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the National Endowment for the Arts is soliciting comments concerning the proposed information collection of: Blanket Justification for the National Endowment for the Arts Panelist Profile Form. A copy of the current information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 2, 1997. The National Endowment for the Arts is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electrical, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: A.B. Spellman, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506–000, telephone 202–682–5421 (this is not a toll-free number), fax 202–578–5049.

Dated: March 27, 1997.

Murray Welsh,

Director, Administrative Service, National Endowment for the Arts.

[FR Doc. 97–8279 Filed 4–1–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Submission for OMB Review: Comment Request

Title of Collection: Survey of Earned Doctorates.

In compliance with the requirement of Section 3508(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) publishes periodic summaries of proposed projects. Such a notice was published at 62 FR 2691, dated January 17, 1997. No comments were received.

The materials are now being sent to OMB for review. Send any written comments to Desk Office, OMB, 3145–033, OIRA, OMB, Washington, D.C. 20503. OMB should receive comments within 30 days after the date of this notice.

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 data collection techniques and other forms of information.

Proposed Project: The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by five Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly educated individuals.

Data is obtained from each person earning a research doctorate on their field of specialty, educational background, sources of support in graduate school, postgraduation plans for employment, and demographic characteristics. The information is used extensively by the Federal government, universities and others. The National Science Foundation, as the lead agency, publishes statistics from the survey in the annual publication series Selected Data on Science and Engineering Doctorates (available in print and electronically on the World Wide Web). The National Academy of Sciences also disseminates a free report entitled Summary Report: Doctorate Recipients from U.S. Universities.

We anticipate a response rate of 95% and expect a total of 42,750 (45,000×.95) respondents who earned a research doctorate. We estimate the average burden per respondent to be 20 minutes and the entire information burden for the respondents to be 14,250 hours.

Dated: March 27, 1997.

Gail. A. McHenry,

NSF Reports Clearance Officer.

[FR Doc. 97–8352 Filed 4–1–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to Detroit Edison Company (the licensee), for operation of the Fermi 2 facility located in Monroe County, Michigan.

The proposed amendment would revise the technical specifications to allow elimination of response time testing requirements for selected instrument loops in the reactor protection system, isolation system, and emergency core cooling system based on the BWR Owners' Group Topical Report NEDO–32291A, ''System Analyses for Elimination of Selected Response Time Testing Requirements,'' October 1995. Specifically, the response time testing requirements proposed to be eliminated are:

(1) Reactor protection system instrumentation—Sensors for reactor vessel steam dome pressure-high and reactor vessel low water level—Level 3.

(2) Isolation actuation system instrumentation—Sensors for reactor vessel low water level—Level 1 and main steam line flow-high, and;

(3) Emergency core cooling system actuation instrumentation.

The March 27, 1997, application requested that this amendment be processed on an exigent basis. The need for exigent processing exists in that failure of the Commission to act in a timely manner would result in the delaying of resumption of operation of Fermi 2. The licensee was unable to make a more timely application because the licensee only recently discovered that the existing technical specifications require response time testing prior to restarting the unit. The NRC has determined that the licensee used its best efforts to make a timely application for the proposed changes and that exigent circumstances do exist and were not the result of any intentional delay on the part of the licensee.

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:

(1) The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the proposed Technical Specification changes is to eliminate response time testing requirements for selected instrument loops in the Reactor Protection System, Isolation System, and Emergency Core Cooling System. However, because of the continued application of other Technical Specification testing requirements such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, the response time of these systems will be maintained within the acceptance limits assumed in plant safety analyses and required for successful

mitigation of an initiating event. The proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within their required response time.

GE [General Electric] and the BWR [Boiling Water Reactors] Owners' Group have completed an evaluation (Reference 1 [of the March 27, 1997 application]) which demonstrates that response time testing is unnecessary due to other Technical Specification testing requirements listed in the preceding paragraph. These other tests are sufficient to identify failure modes or degradations in instrument response time and assure operation of the associated systems within acceptance limits. There are no failure modes that can be detected by response time testing that cannot also be detected by the other Technical Specification tests.

(2) The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within the acceptance limits assumed in the plant safety analyses and required for successful mitigation of an initiating event. Other than the elimination of selected response time tests there are no changes to plant equipment or configuration.

(3) The changes do not involve a significant reduction in the margin of safety.

The current Technical Specification response times are based on the maximum allowable values assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. As described above, the proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analyses. Plant and system response to an initiating event will remain in compliance within the assumptions of the safety analyses, and therefore, the margin of safety is not affected.

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 May 2, 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 Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. 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 John Hannon: 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 John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, 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 March 27, 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 Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 28th day of March 1997.

For the Nuclear Regulatory Commission.

Linh N. Tran,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–8548 Filed 4–1–97; 8:45 am]

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[Docket No. 50–390]

Watts Bar Nuclear Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to the Tennessee Valley Authority (TVA or the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1 located in Rhea County, Tennessee. This Notice supersedes a Notice placed in the **Federal Register** on March 26, 1997 (62 FR 14469) on this matter.

The proposed amendment would revise the Watts Bar Nuclear Plant (WBN) Unit 1 Technical Specifications to increase the enrichment and storage capacity of the spent fuel pool racks. The proposed modification increases the WBN spent fuel storage capacity from 484 fuel assemblies to 1835 fuel assemblies. The initial enrichment of the fuel to be stored in the spent fuel storage racks will be increased from 3.5 weight percent (wt%) to 5.0 wt%. This modification would also change the spacing of stored fuel assembly center-to-center spacing from a nominal 10.72 inches to 10.375 inches in 24 PaR flux trap rack modules and 8.972 inches in ten smaller burnup credit rack modules to be installed peripherally along the south and west pool walls and in a single 15 x 15 burnup credit rack to be installed in the cask pit.

In addition to the above proposed revisions, two limiting conditions for operation will be added to require that the combination of initial enrichment and burnup of each spent fuel assembly to be stored is in the acceptable region and to require boron concentration of the cask pit to be greater than or equal to 2000 parts per million (ppm) during fuel movement in the flooded cask pit. As an added protection to the fuel stored in the cask pit area, the Technical Requirements Manual (TRM) is being revised to require that an impact shield be in place over the fuel when heavy loads are moved near or across the cask pit area.

The WBN Unit 1 Technical Specification Bases and the TRM would be revised to support these changes.

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:

The Nuclear Regulatory Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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. Each standard is discussed below for the proposed amendment.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The following potential scenarios were considered:

1. A spent fuel assembly drop.
2. Drop of the transfer canal gate or the cask pit divider gate.
3. A seismic event.
4. Loss-of-cooling flow in the spent fuel pool.
5. Installation activities.

The effect of additional spent fuel pool storage cells fully loaded with fuel on the

first four potential accident scenarios listed above has been considered. It was concluded that after installation activities have been completed, the presence of additional fuel in the pool does not increase the probability of occurrence of these four events. Also, based on evaluations of bulk pool temperature, rack seismic responses, and refueling accidents, it is reasonable to conclude that there is no significant increase in the consequences of these events after installation is complete (See Reference 1). During the installation activities, the following considerations support a conclusion that neither the probability or consequences of these four scenarios would be significantly increased.

A spent fuel assembly cannot be dropped during installation of the 24 Programmed and Remote System Corporation (PaR) flux trap rack modules because this activity will take place before the end of operating cycle one and there will be no spent fuel in the WBN pool to be moved or shuffled. Before installing the ten smaller burnup credit racks in the pool, some fuel will be moved to create a three foot lateral free zone clearance from stored fuel. This would involve a one-time movement of an estimated maximum of 225 fuel assemblies, which is less tha[n] half the fuel movements during one refueling outage. This does not significantly increase the probability of dropping a fuel assembly, particularly when the many administrative controls and physical limitations imposed on fuel handling operations are considered. The fuel handling system consists of equipment and structures utilized for safely implementing refueling operations in accordance with requirements of General Design Criteria 61 and 62 of 10 CFR 50, Appendix A. The radiological dose consequences of dropping a 5.0 wt% fuel assembly are different from the previous FSAR [Final Safety Analysis Report] evaluation for the 3.5 wt% fuel assembly. The Beta and Gamma doses decrease and the maximum thyroid dose increase is less than 9%. Therefore, the change in calculated dose values is insignificant and remains well within regulatory guidelines.

It may be necessary to move the transfer canal gate and the cask pit divider gate between their gated and stored positions during installation of the burnup credit ''baby'' rack modules along the south and west walls. During rack installation, the previously mentioned three foot lateral free zone clearance to stored fuel would exist. Therefore, no heavy load would be carried directly over irradiated fuel during installation of the racks. There are numerous design features which comply with NUREG–0612 to preclude these gates from dropping on spent fuel. These features include design of the lifting devices, design of the crane, and use of written procedures. Also, the evaluation results for a gate drop on the racks indicates that permanent damage to a fuel storage cell is limited to a maximum depth of less than six inches below the top of the rack with no effect on the subcriticality of fuel stored in adjacent cells. Based on the foregoing, it is reasonable to conclude that gate handling during the installation of the ''baby'' racks would not involve a significant increase in the probability or consequences of an accident.

The probability of a seismic event is not related to installation activities. The worst consequence resulting from a seismic event during installation activities would occur during handling of a rack. The consequences would be insignificant because the Auxiliary Building crane is seismically qualified and both handling equipment and operations meet the criteria of NUREG–0612. Nevertheless, if the seismic event resulted in a rack drop, the consequences are insignificant, i.e., localized damage to the pool liner and a minor leak rate which would be small in comparison to available installed makeup capacity. The cooling and shielding of the spent fuel would remain unaffected. Also the racks being moved are empty during installation and therefore, the criticality consequences of seismic events are bounded by evaluations for loaded racks.

Rack installation activities cannot cause an accidental loss-of-cooling flow in the spent fuel pool. The vital components of the spent fuel pool cooling and cleanup system (SFPCCS) are not located proximate to the pool installation activities. Coolant flow may be deliberately curtailed to facilitate installation of the ''baby'' racks directly beneath the discharge piping in the southwest corner of the pool. The effects of such an action would be readily minimized and made inconsequential during the detailed installation planning phase by selecting a time when decay heat input from stored fuel is relatively constant. Also careful preplanning of the work would minimize out-of-service time and provide for intermittent coolant flow restart, if necessary, to maintain acceptable bulk coolant temperatures. Similarly, the effect of an independently initiated loss-of-coolant flow incident on reracking activities can be easily accommodated by stopping work, as necessary, to mitigate any adverse effects on the installation process. The consequences of loss-of-cooling flow in the spent fuel pool during installation are bounded by the analysis in Chapter 5 of the report which includes the situation in which ''baby'' racks and the 15 x 15 cask pit rack are installed, and the pool is filled to capacity with spent fuel.

With regard to the actual installation activities, the existing WBN TRM prohibits loads in excess of 2059 pounds from travel over fuel assemblies in the storage pool and requires the associated crane interlocks and physical stops be periodically demonstrated operable. During installation, racks and associated handling tools will be moved over the spent fuel pool, however there will be no fuel in the pool when the 24 flux trap rack modules are installed. A three foot lateral free zone clearance from stored spent fuel will be maintained during installation of the ten smaller burnup credit rack modules. Installation work in the spent fuel pit area will be controlled and performed in strict accordance with specific written instructions.

NUREG–0612 states that in lieu of providing a single failure-proof crane system, the control-of-heavy-loads guidelines can be satisfied by establishing that the potential for a heavy load drop is extremely small. Storage rack movements to be accomplished with the WBN Auxiliary Building crane will conform with NUREG–0612 guidelines in that the probability of a drop of a storage rack is extremely small. The crane has a tested capacity of 125 tons. The maximum weight of any existing, replacement, or new storage rack and its associated handling tool is less than 20 tons. Therefore, there is ample safety factor margin for movements of the storage racks by the Auxiliary Building crane. Special lifting devices, which have redundancy or a rated capacity sufficient to maintain adequate safety factors, will also be utilized in the movements of the storage racks. In accordance with NUREG–0612, Appendix B, the safety margin ensures that the probability of a load drop is extremely low.

Future load travel over fuel stored in a rack specifically designed for the cask loading area of the cask pit will be prohibited unless an impact shield, which has been specifically designed for this purpose, is covering the area. Loads that are permitted when the shield is in place must meet analytically determined weight, travel height, and cross-sectional area criteria that preclude penetration of the shield. A Technical Requirement (TR) has been proposed that incorporates the previously mentioned load criteria.

Also a rack change-out sequence is being developed that addresses removal of the existing racks, movement of the new racks into the Auxiliary Building, initial staging on the refueling floor, and final installation in the pool. The change-out sequence objectives include establishing lift heights, travel distances, and number of lifts to be as low as reasonably achievable. Accordingly, it is concluded that the proposed installation activities will not significantly increase the probability of a load-handling accident. The consequences of a load-handling accident are unaffected by the proposed installation activities.

The consequences of a spent fuel assembly drop were evaluated, and it was determined that the racks will not be distorted such that the racks would not perform their safety function. The criticality acceptance criterion, K_{eff} less than or equal to 0.95, is not violated, and the calculated doses are well within 10 CFR Part 100 guidelines. The radiological consequences of the fuel assembly drop accident evaluated for WBN, have changed, however, the changes do not involve a significant increase in consequences and are well within the 10 CFR 100 requirements.

A TRM change has been proposed that would permit the transfer-canal gate and the divider gate for the cask pit to travel over fuel assemblies in the spent fuel pool during movement between their gated and stored position. Rack damage is restricted to an area above the active fuel region, therefore, neither criticality nor radiological concerns exist.

The consequences of a seismic event have been evaluated. The replacement racks are

designed and fabricated and the new racks will be fabricated to meet the requirements of applicable portions of the NRC regulatory guides and published standards. Design margins have been provided for rack tilting, deflection, and movement such that the racks do not impact each other or the spent fuel pool walls in the active fuel region during the postulated seismic events. The free-standing racks will maintain their integrity during and after a seismic event. The fuel assemblies also remain intact and therefore no criticality concerns exist.

The spent fuel pool system is a passive system with the exception of the fuel pool cooling train and heating, ventilating, and air-conditioning (HVAC) equipment. Redundancies in the cooling train and HVAC hardware are not reduced by the planned fuel storage modification. The potential increased heat load resulting from any additional storage of spent fuel is well within the existing system cooling capacity. Therefore, the probability of occurrence or malfunction of safety equipment leading to the loss-of-cooling flow in the spent fuel pool is not significantly affected. Furthermore, the consequences of this type incident are not significantly increased from previously evaluated cooling system loss of flow malfunctions. Thermal-hydraulic scenarios assume the reracked pool is approximately 90% full with spent fuel assemblies. From this starting point, the remaining storage capacity is utilized by analyzing both normal and unplanned full core off loads using conservative assumptions and previously established methods. Calculated values include maximum pool water bulk temperature, coincident maximum pool water local temperature, the maximum fuel cladding temperature, time-to-boil after loss-of-cooling paths, and the effect of flow blockage in a storage cell.

Although the proposed modification increases the pool heat load, results from the above analyses yield a maximum bulk temperature less than 160 degrees Fahrenheit which is below the bulk boiling temperature. Also the maximum local water temperature is below nucleate boiling condition values. Associated results from corresponding loss-of-cooling evaluations give minimums of 5.3 hours before boiling begins and 45 hours before the pool water level drops to the minimum required for shielding spent fuel.

This is sufficient time to begin utilization of available alternate sources of makeup cooling water. Also, the effect of the increased thermal loading on the pool structure, associated cooling system, and components was evaluated and determined to establish an acceptable design basis with the new storage configuration. No modifications were necessary because of the increased temperature.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed modification has been evaluated in accordance with the guidance of the NRC position paper entitled, ''OT Position for Review and Acceptance of Spent-Fuel Storage and Handling Applications'', appropriate NRC regulatory guidelines; appropriate NRC standard review plans; and appropriate industry codes and standards. Proven analytical technology was used in designing the planned fuel storage expansion and will be utilized in the installation process. Basic reracking technology has been developed and demonstrated in applications for fuel pool capacity increases that have already received NRC staff approval.

Proposed TSs for the spent fuel storage racks use burnup credit and fuel assembly administrative placement restrictions for criticality control. These restrictions are described in the proposed change to the design features section of the TSs by reference to the Spent Fuel Pool Modifications report. Additional evaluations were required to ensure that the criticality criterion, k_{eff} less than or equal to 0.95, is maintained. These include evaluation for the abnormal placement of unirradiated (fresh) fuel assemblies of 5.0 wt% enrichment into a storage cell location designed for lower enrichment or irradiated fuel. Soluble boron, for which credit is permitted under these abnormal conditions, ensures that reactivity is maintained substantially less than the design requirement. For example, if the PaR flux trap racks are inadvertently all loaded with fresh assemblies of the maximum 5.0 wt% fuel instead of observing the 3.8 wt% and 6.75 MWD/KgU controls, the worth of the 2000 ppm borated water is sufficient to lower the k_{eff} of the storage racks to 0.83. The existing and proposed TSs require boron concentration in the pool and cask pit to be greater than or equal to 2000 ppm during fuel movement. An analytical determination of the reactivity worth of 2000 ppm borated water in the spent fuel storage pool predicted the change in k_{eff} to be approximately 17 percent k_{eff}. Although no credit for soluble boron was proposed in the TSs, it was also determined by an independent calculation that a minimum concentration of 520 ppm soluble boron allows the unrestricted storage of 5.0 wt% enriched fuel in the PaR flux trap racks.

The Holtec-designed peripheral ''baby'' racks and the 15 x 15 racks in the cask loading area can safely and conservatively store fuel of 5 wt% initial enrichment burned to 41 MWD/kgU or lower enriched fuel with lower burnup, i.e., fuel of equivalent reactivity. Evaluations have confirmed that, for the abnormal placement of a fresh fuel assembly of 5.0 wt% in these racks, the criticality criterion is maintained with the existing and proposed TS requirements of 2000 ppm soluble boron.

Although these changes required addressing additional aspects of a previously analyzed accident, the possibility of a previously unanalyzed accident is not created.

The impact shield design together with its attendant administrative controls and NUREG–0612 heavy load lift compliance, renders the possibility of a heavy load drop on fuel as not credible in accordance with the NUREG–0612 single-failure-proof criteria. Accordingly, since this particular part of the proposed reracking modification is not a change that could malfunction by a new single failure, the movement of heavy loads over the cask pit does not create the possibility of a new or different kind of accident.

It is therefore concluded that the proposed reracking does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The design and technical review process applied to the reracking modification included addressing the following areas:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material, and structural considerations.

The established acceptance criterion for criticality is that the neutron multiplication factor shall be less than or equal to 0.95, including all uncertainties. The results of the criticality analyses for the rack designs demonstrate that this criterion is satisfied. The methods used in the criticality analysis conform to the applicable portions of NRC guidance and industry codes, standards, and specifications. In meeting the acceptance criteria for criticality in the spent fuel pool and the cask loading area, such that k_{eff} is always less than 0.95 at a 95/95 percent probability tolerance level, the proposed amendment does not involve a significant reduction in the margin of safety for nuclear criticality.

Conservative methods and assumptions were used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pit area. The thermal-hydraulic evaluation used methods previously employed. The proposed storage modification will increase the heat load in the spent fuel pool, but the evaluation shows that the existing spent fuel cooling system will maintain the bulk pool water temperature at or below 160 degrees Fahrenheit. Thus it is demonstrated that the worst-case peak value of the pool bulk temperature is considerably lower than the bulk boiling temperature. Evaluation also shows that maximum local water temperatures along the hottest fuel assembly are below the nucleate boiling condition value. Thus, there is no significant reduction in the margin of safety for thermal hydraulic or spent fuel cooling considerations.

The mechanical, material, and structural design of the spent fuel racks is in accordance with applicable portions of NRC's position in ''OT Position for Review and Acceptance of Spent-Fuel Storage and Handling Applications,'' dated April 14, 1978 (as modified January 18, 1979), as well as other applicable NRC guidance and industry codes. The primary safety function of the spent fuel racks is to maintain the fuel assemblies in a safe configuration through normal and abnormal loading conditions. Abnormal loadings that have been evaluated with acceptable results and discussed previously include the effect of an earthquake and the impact because of the drop of a fuel assembly. The rack materials used are compatible with the fuel assemblies and the environment in the spent fuel pool.

The structural design for the new racks provides tilting, deflection, and movement margins such that the racks do not impact each other or the spent fuel pit walls in the active fuel region during the postulated seismic events. Also the spent fuel assemblies themselves remain intact and no criticality concerns exist. In addition, finite element analysis methods were used to evaluate the continued structural acceptability of the spent fuel pit. The analysis was performed in accordance with ''Building Code Requirements for Reinforced Concrete,'' (ACI 318–63,77). Therefore, with respect to mechanical, material, and structural considerations, there is no significant reduction in a margin of safety.

Summary

Based on the above analysis, TVA has determined that operation of WBN, in accordance with the proposed amendment, would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, (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. Therefore, operations of WBN in accordance with the proposed amendments as described do not involve significant hazard considerations as defined in 10 CFR 50.92 and that the criteria of 10 CFR 50.91 have accordingly been met.

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 thirty (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 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 May 2, 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 Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. 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 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 Mr. Frederick J. Hebdon: 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, and to General Counsel, Tennessee Valley Authority, ET 10H, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, 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).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.'' The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors'' (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

For further details with respect to this action, see the application for amendment dated, October 23, 1996, as supplemented on December 11, 1996, January 31, February 10 and 24 and March 11, 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 Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 27th day of March 1997.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Sr. Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–8401 Filed 4–1–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 72–9]

Department of Energy Issuance of Environmental Assessment and Finding of No Significant Impact Regarding The Transfer of The Materials License SNM–2504 and Subsequent License Amendment For The Fort St. Vrain Independent Spent Fuel Storage Installation From The Public Service Company of Colorado to The U.S. Department of Energy

The Nuclear Regulatory Commission is considering the issuance of an order approving an application from the U.S. Department of Energy, Idaho Operations Office (the applicant or DOE–ID) dated December 17, 1996, as supplemented February 4, 5, and 18, and March 12 and 13, 1997, for the transfer of Materials License SNM–2504 and subsequent license amendment, under the provisions of 10 CFR Part 72. In its application, DOE–ID included the ''Environmental Report for the Fort St. Vrain Independent Spent Fuel Storage Installation'' (December 1996).

Environmental Assessment

Identification of the Proposed Action

The applicant is seeking NRC approval to take possession of spent nuclear fuel and other radioactive materials associated with spent nuclear fuel storage presently in the possession of the Public Service Company of Colorado (PSCo) at its Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI) located in Weld County, Colorado, and to own and operate the FSV ISFSI. The transfer of an ISFSI license is subject to NRC approval under 10 CFR 72.50, ''Transfer of License.'' Pursuant to the provisions of 10 CFR Part 72, the term of the license for the ISFSI would remain as is currently licensed, and the license would expire on November 30, 2011. If the application for transfer is approved, the Commission will issue an order consenting to the transfer. The NRC is also considering an amendment to the materials license to reflect DOE–ID as the new licensee for the FSV ISFSI and the addition of revised Appendices A, B, and C to the license.

After the transfer of the license and subsequent license amendment, DOE will be responsible for all activities at the FSV ISFSI, including, but not limited to, operations, maintenance, surveillance, emergency response, environmental and radiological monitoring, training, and security.

Need for the Proposed Action

DOE–ID applied for a transfer of Materials License SNM–2504 from PSCo to DOE. Materials License SNM–2504 authorizes PSCo to receive, handle, possess, and store spent nuclear fuel elements from the FSV High-Temperature Gas-Cooled Reactor (HTGR) in the FSV ISFSI. The authorized place of use is the FSV ISFSI located on a tract of land adjacent to the former FSV Nuclear Generating Station, located in Weld County, Colorado, near the town of Platteville, Colorado.

The FSV HTGR was built and operated as an advanced reactor concept with cooperation between U.S. Atomic Energy Commission (AEC), Gulf General Atomic, and PSCo. In 1980, DOE agreed to take title to eight fuel segments from the FSV HTGR. DOE also agreed that, in the sole discretion of DOE and under certain conditions, DOE would accept additional spent fuel elements without further adjustment to the contract. Fuel segments 1 through 3 were received by Idaho National Engineering Laboratory (INEL): segment 1 in 1980; segment 2 in 1982; and segment 3 in 1984 and 1986. (Note: Recently, the laboratory's name was changed to Idaho National Engineering and Environmental Laboratory or INEEL. For the purposes of this assessment, the term INEL will be used rather than INEEL.)

Due to operational difficulties, the reactor was permanently shut down in August 1989. PSCo decided to decontaminate and decommission the reactor facility and terminate the 10 CFR Part 50 license. PSCo successfully negotiated with DOE for INEL to receive the remaining FSV fuel. However, after three shipments of the FSV spent fuel to INEL, the Governor of the State of Idaho prohibited DOE from receiving any subsequent shipments of the FSV fuel. As interim storage for the spent nuclear fuel, PSCo selected a modular vault dry storage system (MVDSS) designed by GEC Alsthom Engineering Systems, LTD., and licensed by Foster Wheeler Energy Corporation, Energy Applications Division (formerly Foster Wheeler Energy Applications, Inc.). On November 4, 1991, NRC issued to PSCo a 20-year license to receive, possess, store, and transfer FSV spent nuclear fuel to the ISFSI. PSCo began loading the ISFSI with fuel on December 26, 1991, and completed loading on June 10, 1992.

In December 1995, DOE notified the NRC of its intent to purchase the FSV ISFSI from PSCo, take title to the spent fuel, and transfer Materials License SNM–2504 from PSCo to DOE. On February 9, 1996, DOE and PSCo signed an Agreement in Principle stating that DOE took immediate title to the spent nuclear fuel stored in the FSV ISFSI and that PSCo would manage the ISFSI in accordance with SNM–2504, at DOE expense, until the license could be transferred from PSCo to DOE.

Therefore, DOE currently has title to the FSV spent fuel stored in the ISFSI. DOE has agreed to purchase the ISFSI from PSCo and assume responsibility for the operation (including in-situ receipt of the spent nuclear fuel and high-level waste contents, storage, handling, retrieval, and transfer, thereof), maintenance, and decommissioning of the FSV ISFSI. Transferring Materials License SNM–2504 from PSCo to DOE is needed so that the responsibility for the continued, safe operation of the FSV ISFSI lies with DOE as owner of the fuel and ISFSI.

Environmental Impacts of the Proposed Action

The environmental impacts to the FSV site have been analyzed in previous evaluations. In August 1972, the AEC issued the ''Final Environmental Statement Related to the Operation of Fort St. Vrain Nuclear Generating Station.'' In February 1991, the NRC issued the Environmental Assessment Related to the Construction and Operation of the Fort St. Vrain Independent Spent Fuel Storage Installation,'' which specifically evaluated the environmental impacts related to the construction and operation of the FSV ISFSI. This environmental assessment concluded that the FSV ISFSI would not significantly affect the quality of the human environment. Moreover, in November 1992, the ''Environmental Assessment Regarding Order Authorizing Decommissioning of Fort St. Vrain Nuclear Generating Station,'' was issued which covered decommissioning activities at the facility, and this assessment was issued after the Materials License SNM–2504 was granted (November 4, 1991).

The proposed action is administrative and procedural in nature, and as such, there are no associated environmental impacts beyond those previously considered. To ensure that the environmental monitoring program is acceptable, DOE–ID's proposed environmental monitoring program and implementation of that program will be assessed and documented in the NRC staff's safety evaluation report in accordance with 10 CFR 72.44(d)(2). DOE will need to demonstrate that its program is comparable to the PSCo program.

The proposed action will not increase the probability or consequences of accidents, will not increase the possibility of a different type of accident, and will not decrease the margin of safety. There are no changes being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Moreover, it does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

With the alternative of no action or denial of the application, PSCo would retain ownership of Materials License SNM–2504 and be responsible for the continued operation and maintenance of the ISFSI while DOE has title to the fuel. This alternative gives one organization responsibility under the license for the radioactive material owned by another organization. Therefore, the proposed action is preferable because the organization that owns the spent nuclear fuel would have responsibility under license for its possession.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Impact Statement Related to the Operation of Fort St. Vrain Nuclear Generating Station'' (August 1972), and the ''Environmental Assessment Related to the Construction and Operation of the Fort St. Vrain Independent Spent Fuel Storage Installation'' (February 1991).

List of Agencies and Persons Consulted

The Director of the Laboratory and Radiation Services Division of the Colorado Department of Public Health and Environment was consulted about the EA for the proposed action. This organization had no comments on the proposed action.

During a public meeting held on February 20, 1997, the DOE and PSCo staffs were consulted regarding the environmental monitoring program.

References used in preparation of the EA:

1. DOE–ID License Transfer Application, including the Decommissioning Plan, Emergency Plan, Environmental Report, Quality Assurance Requirements and Description, and Technical Specifications, dated December 17, 1996, as supplemented February 4, 5, and 18, and March 12 and 13, 1997.
2. NRC, ''Environmental Assessment Regarding Order Authorizing Decommissioning of Fort St. Vrain Nuclear Generating Station,'' dated November 1992.
3. NRC, ''Environmental Assessment Related to the Construction and Operation of the Fort St. Vrain Independent Spent Fuel Storage Installation,'' dated February 1991.
4. AEC, ''Final Environmental Statement Related to the Operation of Fort St. Vrain Nuclear Generating Station,'' dated August 1972.
5. NRC, 10 CFR Part 20, ''Standards for Protection Against Radiation.'
6. NRC, 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. The staff has determined that the proposed action of transferring Materials License SNM–2504 from PSCo to DOE and the subsequent license amendment will not significantly impact the quality of the environment. Therefore, an environmental impact statement is not warranted, and pursuant to 10 CFR 51.31, a Finding of No Significant Impact is appropriate.

Based upon the EA, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an EIS for the proposed action.

For further details with respect to this action, see the application dated December 17, 1996, as supplemented February 4, 5, and 18, and March 12 and 13, 1997, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Weld Library District, Lincoln Park Branch, 919 7th Street, Greeley, Colorado 80631.

Dated at Rockville, Maryland, this 26th day of March 1997.

For the U.S. Nuclear Regulatory Commission.

William F. Kane,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–8402 Filed 4–1–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 91st meeting on April 22–24, 1997, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, April 22, 1997—8:30 A.M. until 6:00 P.M.
Wednesday, April 23, 1997—8:30 A.M. until 6:00 P.M.
Thursday, April 24, 1997—8:30 A.M. until 4:00 P.M.

During this meeting, the Committee plans to consider the following:

A. *Igneous Activity*—The Committee will review the NRC staff and DOE investigations of this potentially adverse condition to the acceptability of the proposed high-level waste repository at Yucca Mountain, Nevada. The review will focus on the status of results and paths toward resolution from these studies of potential volcanism.

B. *Planning for Commission Meeting*—The Committee will prepare for its next meeting with the Commission currently scheduled for May 20, 1997 at 2:00 p.m.

C. *Convention on the Safety of Radioactive Waste Management*—The Committee will hear a report from the NRC's Division of Waste Management on this international treaty which is under consideration.

D. *Screening Methodology for Assessing Prior Land Burials*—The Committee will review the staff's final branch technical position on this screening methodology including its disposition of public comments received.

E. *State of Nevada*—The Committee will hear from a represent-ative of the State of Nevada who will discuss the Nevada perspective as to the difference between DOE's viability assessment and the site suitability determinations for the proposed Yucca Mountain repository. Comments will also be offered on the proposed amendments to DOE's 10 CFR Part 960. The amendments would focus Part 960 as to its use in evaluating the suitability of the Yucca Mountain site for development as a repository.

F. *Meeting with the Director, the Division of Waste Management*-The Committee will hold a current events discussion with the Director.

G. *Defense-in-Depth*—The Committee will hear presentations from representatives of industry that will address the topic of subsystem requirements in 10 CFR 60 as a means on implementing the defense-in-depth concept.

H. *Preparation of ACNW Reports*—The Committee will discuss potential reports, including Igneous Activity related to the proposed Yucca Mountain Repository, a Branch Technical Position on a Screening Methodology for Assessing Prior Land Burials, and other topics discussed during the meeting as the need arises.

I. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

J. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 8, 1996 (61 FR 52814). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected

portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: March 27, 1997.

Andrew L. Bates,

Advisory Committee Management Office.

[FR Doc. 97–8404 Filed 4–1–97; 8:45 am]

BILLING CODE 7590–01–P

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration (DHHS, FDA).

SUMMARY: The NRC and the DHHS, FDA, signed a Memorandum of Understanding (MOU) on August 26, 1993, which describes the respective roles of the FDA and NRC for regulating medical devices and radiopharmaceuticals containing radioactive materials, and the coordination between the two agencies. The MOU was noticed in the **Federal Register** on September 8, 1993 (58 FR 47300). This notice announces the 3-year renewal of the MOU. The only changes to the MOU were the liaison officers for each agency.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS T–8 F 5, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–7231.

Dated: March 27, 1997

Larry W. Camper,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 97–8403 Filed 4–1–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Request for Comments on Development of Strategic Plan for U.S. Postal Service, Pursuant to the Government Performance and Results Act of 1993

AGENCY: Postal Service.

ACTION: Request for comments.

SUMMARY: The Government Performance and Results Act of 1993 requires that the Postal Service and Federal agencies set strategic goals, measure performance, and report on results. It requires development, no later than by the end of fiscal year 1997, of a five-year strategic plan, to include the organization's mission statement, identify its long-term strategic goals, and describe how it intends to achieve its goals. The Act also requires that in developing its Strategic Plan, the Postal Service shall solicit and consider the ideas of those potentially affected by or interested in the Strategic Plan. This notice therefore asks for public comment concerning development of the Postal Service's Strategic Plan for the years 1998–2002.

DATES: Comments must be received by June 1, 1997.

ADDRESSES: Written comments should be directed to Robert A.F. Reisner, Vice President, Strategic Planning, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, DC 20260–1520.

FOR FURTHER INFORMATION CONTACT: Jon L. Cook, (202) 268–4099.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Government Performance and Results Act of 1993, Public Law 103–62, (GPRA) was enacted to make Federal programs more effective and publicly accountable by targeting results, service quality, and customer satisfaction. Other statutory goals were to improve Congressional decisionmaking and to improve internal management of the Federal Government. Public Law 103–62, section 2(b), 107 Stat 285. Because of the Postal Service's role as an independent establishment of the Executive Branch of the Government of the United States, section 7 of the law establishes separate provisions which apply to the Postal Service (sections 2801–2805 of title 39, United States Code).

Section 2802 of title 39, United States Code, requires that the Postal Service submit to the President and the Congress a strategic plan for its program activities, no later than September 30, 1997. The plan is to contain:

(1) a comprehensive mission statement covering the major functions and operations of the Postal Service;

(2) general goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the Postal Service;

(3) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

(4) a description of how the performance goals included in the plan required under section 2803 shall be related to the general goals and objectives in the strategic plan;

(5) an identification of those key factors external to the Postal Service and beyond its control that could significantly affect the achievement of the general goals and objectives; and

(6) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

39 U.S.C. 2802(a).

The GPRA also requires the preparation of annual performance plans covering each program activity set forth in the Postal Service budget. 39 U.S.C. 2803. These plans are to link the strategic goals in the Strategic Plan with ongoing operations. In addition, the law requires preparation of program performance reports, to review and compare performance with performance goals in the annual performance plan. 39 U.S.C. 2804.

In order to involve the public in the process, GPRA requires that, as it develops its strategic plan, the Postal Service ''shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and shall advise the Congress of the contents of the plan.'' 39 U.S.C. 2802(d).

Discussion of the Postal Service Mission and its Strategic Planning Process

In 1970, the Congress enacted the Postal Reorganization Act, recasting the former Post Office Department as the United States Postal Service. Its intent was that the former department evolve into a Federal entity that operates more

like a business. While fulfilling its basic mission of providing universal service at a uniform price, the Postal Service would focus more clearly on the needs of all of its customers.

* * *The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.

39 U.S.C. 101(a).

To carry out this mission of the United States Postal Service as described in section 101 of title 39, United States Code, the organic statute, a statement of mission was adopted in recent years:

To provide every household and business across the United States with the ability to communicate and conduct business with each other and the world through prompt, reliable, secure and economic services for the collection, transportation and delivery of messages and merchandise.

A statement of vision was also developed at the same time and reads as follows:

Our postal products will be recognized as the best value in America. We will evolve into a provider of 21st century postal communications. We will be the most effective and productive service in the Federal Government and markets that we serve.

The Postal Service seeks comment on this interpretation of mission and vision. In addition, the Postal Service seeks comment on the management goals discussed below.

With its mandate to operate in a business-like manner, the Postal Service developed a 5-year Strategic Planning Process in the 1980's. The Postal Service also has been systematically reviewing performance and reforming processes. Since 1994, when the Postal Service applied the Malcolm Baldrige National Quality Award criteria to create a management system that is called CustomerPerfect!, the Postal Service has invested in a systematic revision of its management system, that is currently using process management tools to reform processes throughout the Service.

The CustomerPerfect! process is designed to provide structure and discipline to achieve better results for postal customers. The CustomerPerfect! management cycle has four distinct phases which can be described as: Establish, Deploy, Implement and Review. The ''Establish'' phase involves setting organizational direction, determining long and near-term goals, and making decisions about how to measure progress. The output is a set of broad goals and subgoals for a five-year period, as well as a process prioritizing specific subgoals, targets, and indicators for the coming year.

The ''Deploy'' phase involves communicating goals to the organization, to seek individual unit contributions to the achievement of targets. The ''Implementation'' phase requires specific, measurable targets for improvement. The ''Review'' phase involves a periodic check on the system and its performance, whose primary value is learning what will help improve future results.

Therefore, to comply with the requirements of GPRA to solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and to benefit from such guidance in the preparation of its strategic direction, the Postal Service is hereby requesting public comment on development of its Strategic Plan for the years 1998–2002.

Comments are requested in particular concerning the Postal Service's priorities in sustaining and enhancing a viable twenty-first century Postal Service, as reflected in the following goals developed as part of the CustomerPerfect! process:

(1) Improve customer satisfaction by offering superior customer value in each market and customer segment;

(2) Improve employee and organizational effectiveness by having the right people in the right place with the right tools at the right time to consistently provide superior customer value and ensure commercial viability in a dynamic environment;

(3) Improve financial performance to assure our commercial viability as a service provider for the worldwide movement of messages, merchandise, and money.

Any comments pertaining to how the Postal Service can best achieve these goals, or on other aspects of strategic planning, goals or performance measurement will be appreciated.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–8270 Filed 3–1–97; 8:45 am]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2937; Amdt. 2]

State of Tennessee

In accordance with a notice from the Federal Emergency Management Agency, dated March 19, 1997, the above-numbered Declaration is hereby amended to include the Counties of Lake and Tipton in the State of Tennessee as a disaster area due to damages caused by heavy rain, tornadoes, flooding, hail and high winds beginning on February 28, 1997 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of New Madrid, Missouri, may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been covered under a separate declaration for the same occurrence.

The number assigned to this disaster for economic injury is 943200 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 21, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–8366 Filed 4–1–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2524]

Study Group on Intercountry Adoption of the Secretary of State's Advisory Committee on Private International Law: Meeting on Basic Concepts for Federal Implementing Legislation for 1993 Hague Convention on Intercountry Adoption

The fifth meeting of the Study Group on Intercountry Adoption will take place on Tuesday, April 15, 1997, from 9:30 a.m. to 4:30 p.m., in the main building of the Department of State in Washington, DC.

The purpose of the meeting is to discuss basic concepts for implementation throughout the United States of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The meeting will focus on a concept paper that will be available from the Office of the Legal Adviser of the State Department in advance of the meeting.

The Hague Convention provides norms and procedures to safeguard children on the move from one party country to another in connection with their adoption and to protect the interests of their birth and adoptive parents. It provides, among other things, for the recognition of adoptions made pursuant to the Convention, requires the establishment in party countries of a national Central Authority with primarily facilitation and oversight functions, and requires adoption

agencies wishing to offer services for individual adoptions covered by the Convention to meet national accreditation requirements and individual providers of adoption services to be approved.

Those attending the meeting will examine and discuss the concept paper describing the basic approach and provisions of eventual U.S. federal implementing legislation that is currently in preparation by various federal government departments, including the Departments of State, Justice, Health and Human Services, and the U.S. Immigration and Naturalization Service. Draft legislation will be developed after the meeting taking into consideration the comments and proposals made at the meeting and will be submitted to the Office of Management and Budget for Administration clearance. The hope is that the draft bill will be ready for introduction in both Houses of Congress by Summer 1997 as an Administration bill. The Hague Convention is to be submitted to the President at about the same time for transmission to the Senate for advice and consent to U.S. ratification.

Persons and organizations interested in how the Convention is to be implemented in the United States, whether they are able to attend the meeting or not, are welcome in writing or by fax to request documents from, and to submit written comments or proposals to, the office indicated below. The text of the Hague Convention may be found at 31 International Legal Materials 292 (1993); the Appendix at p. 76 of P.H. Pfund, ''Intercountry Adoption: The 1993 Hague Convention: Its Purpose, Implementation, and Promise'', 28 Family Law Quarterly (1994); I/II Uniform Law Review 237 (1993); and 40 Netherlands International Law Review 292 (1993).

Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to the Chair. The meeting is scheduled in the Dean Acheson Auditorium of the Department of State; entry should be only via the 23rd Street entrance between ''C'' and ''D'' Streets, N.W. As access to the building is controlled and in order to expedite entry, the office indicated below should be notified by mail or fax no later than c.o.b. Friday, April 11 of the name, address, firm or affiliation if any, social security number and date of birth of all persons wishing to attend. Between 9:00 and 10:00 a.m. someone will be at the 23rd Street entrance to the State Department to facilitate admission to the building.

For copies of the concept paper, and the text of the Convention if necessary, please contact the Office of the Assistant Legal Adviser for Private International Law (L/PIL), attention Ms. Rosie Gonzales, by mail at 2430 E Street, South Building—Suite 357, Washington, DC 20037–2800 or by fax at (202) 776–8482.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice Chair, Secretary of State's Advisory Committee on Private International Law, U.S. Department of State.

[FR Doc. 97–8516 Filed 3–31–97; 1:52 pm]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Form and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: Office of The Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 3501, *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 13, 1996 (FR 61, page 58275–58276).

DATES: Comments must be submitted on or before May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Bradley, Customer Services Program Manager, K–20, Bureau of Transportation Statistics, 400 7th Street, SW., Room 3430, Washington, DC 20590 (202) 366–8925.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics

Title: Customer Surveys.

OMB CONTROL NUMBER: New.

Affected Entities: Transportation statistics industry and the general public.

Abstract: Customer satisfaction surveys are required by Executive Order 12862, Setting Customer Service Standards, to ensure that the BTS provides the highest quality service to our customers. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

Need: Executive Order 12862, Setting Customer Service Standards, directs BTS to conduct surveys to determine the kind and quality of services the transportation statistics industry and general public wants and expects.

Burden Statement: The estimated annual burden is 683 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, ATTN: BTS Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions or the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and 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.

Issued in Washington, DC on March 27, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–8409 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Advisory Circular; Turbine Engine Vibration Survey

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance Advisory Circular (AC) on turbine engine vibration survey.

SUMMARY: This notice announces the issuance of Advisory Circular (AC), No. 33.83, Turbine Engine Vibration Survey. This AC is on the subject of vibration tests and surveys. A set of improved and harmonized requirements were incorporated into part 33 of the Federal Aviation Regulations (FAR's), and this AC is meant to provide information and guidance concerning an acceptable method, but not the only method, for complying with those new harmonized requirements.

DATES: Advisory Circular No. 33.83 was issued by the New England Aircraft Certification Service, Engine and the Propeller Directorate on February 14, 1997.

FOR FURTHER INFORMATION CONTACT:

Thomas Boudreau, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA, 01803, telephone (617) 238–7117, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

This AC is on the subject of vibration tests and surveys, and was identified as one where differences existed between the Joint Aviation Requirements—Engines, and part 33 of the Federal Aviation Regulations (FAR's). A study group composed of representatives of the Federal Aviation Administration, the Joint Aviation Authorities, Transport Canada and industry worked to produce a set of improved and harmonized requirements that was subsequently incorporated into part 33 of the FAR.

Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. Notice was published in the **Federal Register** on April 18, 1995 (60 FR 19442), to announce the availability of, and comment to the draft AC.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 4113, 44701–44702, 44704, provides guidance for these new requirements that were published in the **Federal Register** on June 4, 1996 (61 FR 28430).

Issued in Burlington, Massachusetts, on March 25, 1997.

James C. Jones,

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

[FR Doc. 97–8278 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–M

Advisory Circular; Continued Rotation and Rotor Locking

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance Advisory Circular (AC) on turbine engine continued rotation and rotor locking.

SUMMARY: This notice announces the issuance of Advisory Circular (AC), No. 33.74/92, Turbine Engine Continued Rotation and Rotor Locking. This AC is combining part 33 sections 33.74 and 33.92. This AC is on the subject of continued rotation and rotor locking tests. A set of improved and harmonized requirements were incorporated into part 33 of the Federal Aviation Regulations (FAR's), and this AC is meant to provide information and guidance concerning an acceptable method, but not the only method, for complying with those new harmonized requirements.

DATES: Advisory Circular No. 33.74/92, was issued by the new England Aircraft Certification Service, Engine and Propeller Directorate on February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA, 01803, telephone (617) 238–7117, fax (617) 238–7120.

SUPPLEMENTARY INFORMATION:

Background

This AC is on the subject of turbine engine continued rotation and rotor locking tests that were identified as one where differences existed between the Joint Aviation Requirements—Engines, and part 33 of the Federal Aviation Regulations (FAR's). A study group composed of representatives of the Federal Aviation Administration, the Joint Aviation Authorities, Transport Canada and industry worked to produce a set of improved and harmonized requirements that was subsequently incorporated into part 33 of the FAR.

Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. Notice was published in the **Federal Register** on April 18, 1995 (60 FR 19442), to announce the availability of, and comment to the draft AC.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 4113, 44701–44702, 44704, provides guidance for these new requirements that were published in the **Federal Register** on June 4, 1996 (61 FR 28430).

Issued in Burlington, Massachusetts, on March 26, 1997.

James C. Jones,

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

[FR Doc. 97–8372 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 22, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–2000), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 28, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28696.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 25.857(e) and 25.1447(c)(1).

Description of Relief Sought: To provide accommodation for up to 24 supernumeraries at the aft portion of DC–10/11 main deck Class E cargo compartments, to accompany the carriage of both live animal and inanimate cargo.

Docket No.: 28822.

Petitioner: Lynx Air International.

Sections of the FAR Affected: 14 CFR 121.465b(1) and (2), 121.99, and 121.607(a).

Description of Relief Sought: To permit the petitioner relief from the dispatcher duty requirements until May 20, 1997 to allow the petitioner time to train additional dispatchers. Additionally, relief is requested to permit relief from the communication requirements during transit of its aircraft through a 100 nautical mile communications gap along its route of flight.

[FR Doc. 97–8373 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

DATES: The meeting will be held on April 23 at 10 a.m.

ADDRESSES: The meeting will be held at the Regional Airlines Association, Second floor, 1200 19th St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Regina L.Jones, (202) 267–9822, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues. This meeting will be held April 23, 1997, at 10 a.m., at the Regional Airlines Association. The agenda for this meeting will include progress reports from the The Air Carrier Pilot Pay for Training working Group, the Air Carrier Minimum Flight Time Requirements Working Group, and the Air Carrier Pilot Pre-Employment Screening Standards and Criteria Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on March 27, 1997.

Gary Davis,

Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–8370 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Announcing the Fifteenth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the fifteenth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. Discussions at this meeting will include specific topics in NHTSA's Crashworthiness, Crash Avoidance and Behavioral research programs.

DATE AND TIME: The meeting is scheduled from 9:00 a.m.to 5:00 p.m. on May 20, 1997.

ADDRESSES: The meeting will be held in Room 8236–40 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, S.W., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairperson.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, S.W., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Coleman, Office of Research and Development, 400 Seventh Street, S.W., Room 6206, Washington, DC 20590, telephone: (202) 366–1537.

Issued on: March 27, 1997.

Ralph J. Hitchcock,

Acting Chairperson, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 97–8410 Filed 4–1–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Extension of Time For Payment of Tax.

DATES: Written comments should be received on or before June 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Application For Extension of Time for Payment of Tax.

OMB Number: 1512–0506.

Form Number: ATF F 5600.38.

Abstract: ATF uses this information to determine if a taxpayer is qualified to extend payment of tax based on circumstances beyond the taxpayer's control. The record retention requirement for this information collection is 3 years.

Current Actions: The form has been renumbered to include all excise taxpayers. The name and address of the taxpayer has been added to the form to identify the applicant. The format of the form has been changed, however, no additional information is requested. The estimated time per respondent has been changed from 1 hour to 15 minutes, therefore, the total annual burden hours have decreased from 12 to 3.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 3.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–8280 Filed 4–1–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Importers Records and Reports, Alcoholic Beverages.

DATES: Written comments should be received on or before June 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gary Malaskovitz, Alcohol Import/Export Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8110.

SUPPLEMENTARY INFORMATION:

Title: Importers Records and Reports, Alcoholic Beverages.

OMB Number: 1512–0352.

Recordkeeping Requirement ID Number: ATF REC 5170/1.

Abstract: These records are used by ATF to verify that operations are being conducted in compliance with the law and to ensure that all taxes and duties have been paid on imported spirits, thus protecting the revenue. The record retention requirement for this information collection is 6 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Federal Government.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 251 hours.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–8281 Filed 4–1–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobaccco and Firearms within the Department of the Treasury is soliciting comments concerning the Applications and Notices—Manufacturers of Nonbeverage Products.

DATES: Written comments should be received on or before June 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20720, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to J. Barry Fields, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8522.

SUPPLEMENTARY INFORMATION:

Title: Applications and Notices—Manufacturers of Nonbeverage Products.

OMB Number: 1512–0378.

Recordkeeping Requirement ID Number: ATF REC 5530/1.

Abstract: These reports are used by ATF district personnel to ensure that the regulated individuals will conduct operations in compliance with the law and regulations. The applications and notices serve to protect the revenue by

helping ATF personnel in determining if spirits on which drawback has been claimed have been diverted to beverage use. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it has been submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 640.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 640.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 1997.

John W. Magaw,

Director,

[FR Doc. 97–8282 Filed 4–1–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Collection Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit For Importation of Firearms, Ammunition, and Implements of War.

DATES: Written comments should be received on or before June 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Barbara Nichols, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit For Importation of Firearms, Ammunition, and Implements of War.

OMB Number: 1512–0018.

Form Number: ATF F 6 Part II, (5330.3B).

Abstract: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. The form is used by persons who are members of the United States Armed Forces.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 9,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 4,500.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–8283 Filed 4–1–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Alcohol Fuel Plant (AFP) Records, Reports and Notices.

DATES: Written comments should be received on or before June 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Alcohol Fuel Plant (AFP) Records, Reports and Notices.

OMB Number: 1512–0215.

Form Number: ATF F 5110.75.

Recordkeeping Requirement ID Number: ATF REC 5110/10.

Abstract: The data for this information collection is necessary to determine that persons are qualified to produce alcohol for fuel purposes and to identify such persons. It is also needed to account for distilled spirits produced, verify its proper disposition, keep registrations current and evaluate permissible variations from prescribed procedures. The record retention

requirement for this information collection is 3 years.

Current Actions: This information collection requirement reflects only a change in the number of respondents. The total number of Alcohol Fuel Producers has decreased from 1,218 to 871.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 871.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 871.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–8284 Filed 4–1–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Records of Things of Value to Retailers and Occasional Letter Reports From Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before June 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to David W. Brokaw, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Records of Things of Value to Retailers and Occasional Letter Reports From Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.

OMB Number: 1512–0392.

Recordkeeping Requirement ID Number: ATF REC 5190/1.

Abstract: These records and occasional letter reports are used to show compliance with the provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers, and prohibits industry members from conducting certain types of sponsorships, advertising, promotions, etc. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12,665.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 51.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–8285 Filed 4–1–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Supporting Data For Nonbeverage Drawback Claims.

DATES: Written comments should be received on or before June 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 929–8210.

SUPPLEMENTARY INFORMATION:

Title: Supporting Data For Nonbeverage Drawback Claims.

OMB Number: 1512–0514.

Form Number: ATF F 5154.2.

Abstract: The form substantiates nonbeverage drawback claims by showing the use of taxpaid distilled spirits to manufacture nonbeverage products. The form is used in ATF

district offices which verify that all distilled spirits can be accounted for and that drawback is paid only in the amount and for the purposes authorized by law. The record retention requirement for this information collection is 3 years.

Current Actions: The number of respondents has decreased from 611 to 590.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 590.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 3,540.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 1997.

John W, Magaw,

Director.

[FR Doc. 97–8286 Filed 4–1–97; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Export Warehouse, Record of Operations.

DATES: Written comments should be received on or before June 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Clifford A. Mullen, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Export Warehouse, Record of Operations.

OMB Number: 1512–0367.

Recordkeeping Requirement ID Number: ATF REC 5220/1.

Abstract: These records are maintained at the premises of the regulated individual and are routinely used by ATF personnel during field tax compliance examinations to verify that untaxpaid tobacco products are not being diverted to domestic consumption. This ensures that tax revenues are protected. The record retention requirement for this information collection is 3 years.

Current Actions: There has been an increase in the number of respondents from 213 to 221.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 221.

Estimated Time Per Respondent: None.

Estimated Total Annual Burden Hours: 1.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 1997.

John W. Magaw,

Director.

[FR Doc. 97–8287 Filed 4–1–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Availability of Annual Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials for Fiscal Years 1995 and 1996 has been issued. The Report summarizes activities of the Committee on matters relative to programs, policies and accomplishments which have been made, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540, and

Department of Veterans Affairs, National Cemetery System, 810 Vermont Ave., N.W., Washington, D.C. 20420.

Dated: March 27, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–8419 Filed 4–1–97; 8:45 am]

BILLING CODE 8320–01–M

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds for applications for assistance under the grant component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, application process and amount of funding available.

DATES: An original completed and collated grant application (plus three

collated copies) for assistance under the VA Homeless Providers Grant and Per Diem Program must be received in Mental Health Strategic Healthcare Group, Washington, DC, by 5 pm Eastern Time on May 15, 1997. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: Veterans Industries, 10770 N. 46th Street (A 400), Tampa, FL, 33617–3465; (813) 228–2871 (this is not a toll-free call). For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule codified at 38 CFR 17.700.

SUBMISSION OF APPLICATION: An original completed and collated grant application (plus three copies) must be submitted to the following address: Mental Health Strategic Healthcare Group (116), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Applications must be received in the Mental Health Strategic Healthcare Group by the application deadline.

FOR FURTHER INFORMATION CONTACT: Roger Casey, Theresa Hayes, or Victor Harris, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Healthcare Group (116), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 273–8442/8445/8443 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program. This program is authorized by Pub. L. 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992. Funding applied for under this Notice may be used for: (1) Remodeling or alteration of existing buildings; (2) acquisition of buildings, acquisition and rehabilitation of buildings; (3) new construction. Applicants may apply for more than one type of assistance.

Although a separate notice will be published announcing fund availability for the Per Diem Component of the program, grant applicants seeking such assistance should indicate this request on the application submitted for a grant. The applicants who are awarded grants will not be required to complete a separate application for per diem assistance. VA will review those portions of the grant application that pertain to per diem.

Grant applicants may not receive assistance to replace funds provided by any state or local government to assist homeless persons. For existing projects, VA will fund only the portion of the project that will house the new program or new component of an existing program. A proposal for an existing project that seeks to shift its focus by changing the population to be served or the precise mix of services to be offered is not eligible for consideration. No more than 25 percent of services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

Authority. VA's Homeless Providers Grant and Per Diem Program is authorized by Sections 3 and 4 of Pub. L. 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 USC 7721 note) and has been extended through fiscal year 1997 by Public Law 104–110. The program is implemented by the final rule codified at 38 CFR Part 17.700. The final rule was published in the **Federal Register** on June 1, 1994 and February 25, 1995. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation. Approximately $3.3 million is available for the grant component of this program.

Application Requirements. The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Conditional selections will be made based on criteria described in the application. Applicants who are conditionally selected will be notified of the additional information needed to confirm or clarify information provided in the application. Applicants will then have one month to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other components of the Grant and Per Diem Program.

Dated: March 24, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 97–8333 Filed 4–1–97; 8:45 am]

BILLING CODE 8320–01–P

Advisory Committee on the Future of VA Long-Term Care

The Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on the Future of VA Long-Term Care will be held on April 29–30, 1997, at the Department of Veterans Affairs, in Room 230, located at 810 Vermont Avenue, NW, Washington, DC. The purpose of the Committee is to provide professional advice on the present scope and structure of VA's long-term care services, and about changes necessary to ensure that services are available and effective in a future healthcare setting. The Committee will begin at 8:30 a.m. (EDT) until 5:00 p.m. (EDT) on April 29 and will begin at 8:30 a.m. (EDT) until 12:00 noon (EDT) on April 30.

The agenda for April 29 will begin with a review of the charge to the Committee and an overview of VA healthcare activities.

On April 30 the Committee will review information on utilization of VA long-term care services and address the issue of access to care and equity in A long-term care services.

The meeting will be open to the public. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Geriatrics and Extended Care Strategic Healthcare Group at 202–273–8539 not later than April 25, 1997.

Dated: March 27, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–8421 Filed 4–1–97; 8:45 am]

BILLING CODE 8320–01–M

VA Innovations in Nursing Advisory Committee; Notice of Meeting

As required by Section 10(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs (VA) hereby gives notice that the third meeting of the VA Innovations in Nursing Advisory Committee will be held April 8–9, 1997, at VA Headquarters, 810 Vermont Avenue NW, Washington, DC. The April 8, 1997, session will be held in room 230 and convene at 9:00 a.m. and adjourn at 5:00 p.m. The April 9, 1997, session will be held in room 830 and convene at 8:00 a.m. and adjourn at 3:00 p.m.

The purpose of the Committee is to present recommendations to the Under Secretary for Health on how VA can generally promote and support health care innovations in which nurses play key leadership and clinical roles and which promote VA's reengineering efforts.

On April 8, the Committee will hear presentations on current innovative healthcare practices from representatives of private healthcare systems, VA network directors and VA medical center administrators. A public comment period is scheduled from 4:15–4:45 p.m. EDT.

On April 9, the Committee will hear presentations on VA eligibility reform, employee education and product line management. A public comment period is scheduled from 1:30–2:00 p.m. EDT.

The meeting is open to the public. Those who plan to attend or who have questions concerning the meeting should contact the Designated Federal Official for the Committee, Charlotte F. Beason, Ed.D., RN, at (202) 273–8422.

Dated: March 27, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–8420 Filed 4–1–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 63
Wednesday, April 2, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-201-002]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 97–5617 appearing on page 10550 in the issue of Friday, March 7, 1997 make the following correction:

In the second column the docket number heading should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OR64-7279a, OR36-1-6298a, OR46-1-6802a; FRL-5696-8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Oregon

Correction

In final rule document 97–5645 beginning on page 10457 in the issue of Friday, March 7, 1997 make the following correction:

On page 10462, in the first column, under *''E. Petitions for Judicial Review''*, in the fifth line ''[insert date 60 days from date of publication in the **Federal Register**]'' should be replaced by ''May 6, 1997''.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Hygromycin B, Pyrantel Tartrate, and Tylosin

Correction

In rule document 97–7541, beginning on page 14300 in the issue of Wednesday, March 26, 1997, make the following correction:

On page 14300, in the first column, the **EFFECTIVE DATE**, ''April 2, 1997'' should read ''April 7, 1997''.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 312

[INS No. 1702-96]

RIN 1115-AE02

Exceptions to the Education Requirements for Naturalization for Certain Applicants

Correction

In final rule document 97–6686 beginning on page 12915 in the issue of March 19, 1997 make the following corrections:

§ 312.1 [Corrected]

(1) On page 12923, in §312.1(b)(3), in the second column, in the first paragraph:

(a) In the sixteenth line ''form'' should read ''from''.

(b) In the seventh line from the bottom of the paragraph ''requirements of English'' should read ''requirements for English''.

(c) In the fourth line from the bottom of the paragraph ''even with reasonable modifications to the methods of determining English proficiency'' was inadvertently repeated.

§ 312.2 [Corrected]

(3) On the same page, in §312.2(b)(1), in the second column:

(a) In the seventh line ''Untied stated'' should read ''United States''.

(b) In the fourth line from the bottom of the paragraph ''results form'' should read ''results from''.

(2) On the same page, in §312.2(b)(2), in the third column:

(a) In the twelth line ''Untied States'' should read ''United States''.

(b) In the seventeenth line ''Neutralization'' should read ''Naturalization''.

(c) In the penultimate line ''purpose'' should read ''purposes''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ASO-39]

Amendment to Class D, E2 and E4 Airspace; Gainesville, FL

Correction

In final rule document 97–6045 beginning on page 11073 in the issue of Tuesday, March 11, 1997 make the following correction:

§ 71.1 [Corrected]

On page 11074, in §71.1, five lines from the bottom ''lat. 29°14′24″N'' should read ''lat. 29°41′24″N'

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107, 108, 109, 129, 191

[Docket No. 27965; Amendement Nos. 107–10, 108–15, 109–3, 129–26, and 191–4]

RIN 2120–AF49

Sensitive Security Information

Correction

In rule document 97–6948, beginning on page 13736 in the issue of Friday, March 21, 1997, make the following corrections:

1. On page 13736, in the first column, in the **SUMMARY** section, in the 16th line, ''1991'' should read ''191''.

2. On page 13742, in the third column, under **Paperwork Reduction Act**, in the third line, ''not'' should read ''no''.

3. On page 13743, in the first column, in the tenth line from the bottom, ''fine'' should read ''final''.

§ 191.1 [Corrected]

4. On page 13744, in the second column, in§ 191.1(b), in the first line, ''*record*'' should be placed in quotation marks..

BILLING CODE 1505-01-D

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974: Republication of Notice of Systems of Records

Correction

In notice document 97–5287 beginning on page 10634 in the issue of Friday, March 7, 1997 make the following correction:

On page 10659, in the third column, in the first line ''**USIA-34**'' should read ''**USIA-41**''.

BILLING CODE 1505-01-D

federal register

Wednesday
April 2, 1997

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants Pharmaceuticals Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5802–8]

RIN–2060–AE83

National Emission Standards for Hazardous Air Pollutants Pharmaceuticals Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standard would reduce air emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture pharmaceutical products. The agency intends that this proposed rule will have a common technology basis with a rule yet to be issued by EPA's Office of Water (OW); this will allow coordinated and cost effective compliance planning by the industry. In addition to soliciting comments on various aspects of the proposed rule, this document also solicits comments on possible approaches for the OW rule.

The major HAP emitted by facilities covered by this proposed rule include methylene chloride, methanol, toluene, and hydrogen chloride. Methylene chloride is considered to be a human carcinogen and the other pollutants can cause noncancer health effects in humans. The proposed rule is estimated to reduce HAP emissions from existing facilities by 22,000 megagrams per year (Mg/yr). It also reduces volatile organic compound (VOC) emissions.

DATES: *Comments.* Comments must be received on or before June 2, 1997.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by April 23, 1997, a public hearing will be held on May 2, 1997 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5673 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by April 23, 1997, by contacting Ms. Marguerite Thweatt.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–96–03, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that separate copies also be sent to the appropriate contact persons listed below. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

SUPPLEMENTARY INFORMATION: The information contained in this notice is also on the Technology Transfer Network (TTN). The TTN, EPA's electronic bulletin board, provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5472 for up to a 14,400 bps modem transfer. In addition, the basis and purpose document (BPD), containing much of the rationale for these proposed standards, is also available on the TTN. The supplementary information document (SID) for the proposed standard, which contains a compilation of technical memoranda, may be obtained from the docket (entry #II–B–1).

Docket. Docket No. A–96–03, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

For information concerning the MACT standard, contact Mr. Randy McDonald at (919) 541–5402, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For further information concerning the effluent limitation guidelines pretreatment standards and new source performance standards, contact Dr. Frank H. Hund, at (202) 260–7786, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460.

Regulated entities. Entities potentially regulated are those which produce pharmaceutical products and intermediates and are located at facilities that are major sources as defined in section 112 of the CAA. Regulated categories and entities include:

Category	Regulated entities
Industry	• Producers of material described by the SIC code 283. • Producers of fermentation, biological or natural extraction, chemical synthesis, and formulation products regulated by the Food and Drug Administration. • Producers of components (excluding excipients) of a pharmaceutical formulations or intermediates used in the production of a pharmaceutical product.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1250 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented in this preamble is organized as follows:

I. List of Source Categories
II. Background
  A. Summary of Considerations Made in Developing this Rule
  B. Regulatory Background
III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process
  A. Source of Authority for NESHAP Development
  B. Criteria for Development of NESHAP
IV. Summary of Proposed Standards
  A. Source Categories to be Regulated
  B. Pollutants to be Regulated and Associated Environmental and Health Benefits
  C. Affected Sources
  D. Format of the Standards
  E. Basis and Level of Proposed Standards
  F. Compliance and Performance Test Provisions
  G. Monitoring Requirements
  H. Reporting and Recordkeeping Requirements
V. Summary Of Environmental, Energy, Cost, and Economic Impacts
  A. Facilities Affected by These NESHAP
  B. Air Impacts
  C. Water and Solid Waste Impacts
  D. Energy Impacts
  E. Cost Impacts
  F. Economic Impacts
VI. Emissions Averaging
VII. Regulation of the Pharmaceutical Manufacturing Industry Under the Clean Water Act
VIII. Solicitation of Comments
IX. Administrative Requirements
  A. Public Hearing
  B. Docket
  C. Executive Order 12866
  D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
  E. Paperwork Reduction Act
  F. Regulatory Flexibility Act
  G. Unfunded Mandates
  H. Miscellaneous

I. List of Source Categories

Section 112 of the amended Act requires that EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, EPA published an initial list of major and area source categories to be regulated (57 FR 31576). Included on that list were major sources emitting HAP from pharmaceuticals production.

Production methods used in the manufacture of pharmaceutical products include both batch and continuous operations, although batch operations make up a majority of the processes. The sizes of the facilities range from those that make one product at the rate of several hundred kilograms per year (kg/yr) to those that produce numerous intermediates and final products on the scale of thousands of kilograms (megagrams [Mg]) per year. Air emissions of HAP compounds originate from breathing and withdrawal losses from storage tanks, venting of process vessels, leaks from piping and equipment used to transfer HAP compounds (equipment leaks), and volatilization of HAP from wastewater streams. Pollutants (HAP) emitted from the production processes include a range of compounds, including VOC. Among the most prevalent are methylene chloride and methanol, which account for nearly 70 percent of all HAP emissions from this industry. Detailed information describing manufacturing processes and emissions can be found in the Basis and Purpose Document.

As of 1992, over 80 U.S. companies at 270 facilities were producing pharmaceutical products. Manufacturing operations covered by this NESHAP include chemical synthesis, formulation, fermentation, and extraction processes and are generally classified under standard industrial classification 283. An estimated 101 facilities are considered to be major sources according to the CAA criterion of having the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP, based on 1992 emissions data. The proposed standard would apply to all major sources that produce pharmaceuticals. Area sources would not be subject to this standard.

II. Background

A. Summary of Considerations Made in Developing This Rule

This regulation reduces emissions of many of the HAP listed in section 112(b)(1) of the CAAA. The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing sources, are based on process and emissions data received from the existing facilities known by the EPA to be in operation.

Regulatory alternatives more stringent than the MACT floor (minimum control level) were selected when they were judged to be reasonable, considering cost, nonair impacts, and energy requirements.

The proposed standards give existing affected sources 3 years from the date of promulgation to comply. This is the maximum amount of time allowed by the Act. New affected sources are required to comply with the standard upon startup.

Included in the proposed rule are methods for determining initial compliance as well as monitoring, recordkeeping and reporting requirements. All of these components are necessary to ensure that affected sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The EPA has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the applicable sections.

In addition, this rule contains an important and innovative pollution prevention alternative for the pharmaceutical industry that provides an option to reduce solvent consumption in lieu of installing end-of-pipe controls. The EPA has developed a regulation that provides a pollution prevention compliance alternative to the traditional control requirements, and the EPA encourages the pharmaceutical industry to meet the CAA requirements through its use. This alternative demonstrates EPA's commitment to developing regulations that are cost effective and flexible, and that reduce monitoring, recordkeeping, and reporting burdens.

Representatives from other interested EPA offices and programs, including State and Regional environmental agency personnel, and representatives from industry participated in the regulatory development process as MACT partnership members. For example, Region II, acting as the lead, worked closely with the States of New York and New Jersey as well as the pharmaceutical industry in developing the pollution prevention alternative. The partnership members were given opportunities to review and comment on the regulation prior to proposal. Several issues presented in the solicitation of comments section reflect these comments. Industry, regulatory authorities, and environmental groups will have another opportunity to comment on the proposed standards and provide additional information during the public comment period.

B. Regulatory Background

The proposed rule implements section 112(d) of the Clean Air Act (CAA) amendments of 1990, which require the Administrator to regulate emissions of HAP listed in section 112(b) of the CAA. The intent of this rule is to protect the public health by requiring new and existing major sources to reduce generation of emissions by using pollution prevention strategies or to control emissions to the level achievable by the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any nonair quality and other air quality related health and environmental impacts, and energy requirements.

In 1978, EPA published a control techniques document entitled ''Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products,'' EPA–450/2–78–029. The control technique guidelines document (CTG) contains a presumptive norm for reasonably available control technology (RACT) for the manufacturing operations covered under SIC Codes 2833 and 2834. This proposed rule does not affect the presumptive RACT guidelines, although a portion of emissions sources are covered by both the proposed regulation and the CTG document.

In 1994, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks. Pharmaceutical processes, defined as processes that synthesize pharmaceutical intermediates or final products using carbon tetrachloride or methylene chloride as a reactant or process solvent, are subject to this rule. The EPA is proposing today to require control of leaking components that are currently not subject to the Negotiated Regulation for Equipment Leaks, but that contain HAP and are associated with processes in this source category.

III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Clean Air Act gives the Environmental Protection Agency the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed; this list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The Agency must list all known categories and subcategories of ''major sources'' that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as the ''maximum achievable control technology'' (MACT). The selection of MACT must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the floor (described below).

The MACT floor is the least stringent level for MACT standards. For new sources, the standards for a source category or subcategory ''shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator'' (section 112(d)(3)). Existing source standards should be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)). The determination of the MACT floor for existing sources under today's rule is that the average emission limitation achieved by the best performing sources is based on a measure of central tendency, such as the arithmetic mean, median, or mode. The determination of percentage reduction in the production-indexed consumption factors used in the pollution prevention alternative is based on the criteria that the alternative must achieve emissions reductions equivalent to what would have been achieved by complying with the MACT.

IV. Summary of Proposed Standards

A. Source Categories to be Regulated

The proposed standards would regulate HAP emissions from pharmaceutical production facilities that are determined to be major sources. The standards would apply to existing sources as well as new sources.

B. Pollutants to be Regulated and Associated Environmental and Health Benefits

Pharmaceutical production facilities emit an estimated 34,000 Mg/yr of organic and inorganic HAP's. Organic HAP's include methylene chloride, methanol, toluene, dimethylformamide, and hexane as well as other HAP's. Hydrogen chloride is an inorganic HAP emitted by this industry. The proposed rule would reduce HAP emissions from pharmaceutical facilities by 65 percent. Some of these pollutants are considered to be carcinogenic, and all can cause toxic health effects following exposure, including nausea, headaches, and possible reproductive effects. The EPA does recognize that the degree of adverse effects to human health can range from mild to severe. The extent and degree to which the human health effects may be experienced is dependent upon (1) the ambient concentration observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency of and duration of exposures, (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the population, and (4) pollutant specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

Most of the organic HAP's emitted from this industry are classified as VOC. The proposed emission controls for HAP's will reduce non-HAP VOC emissions as well. Emissions of VOC have been associated with a variety of health and welfare impacts. Volatile organic compound emissions, together with nitrogen oxides, are precursors to the formation of tropospheric ozone. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity; eye, nose, and throat irritation; nausea; and aggravation of existing respiratory disease. Among the welfare impacts from exposure to ambient ozone include damage to selected commercial timber species and economic losses for commercially valuable crops such as soybeans and cotton.

Hydrogen chloride is listed under section 112(r) of the CAA. The intent of section 112(r), Prevention of Accidental Releases, is to focus on chemicals that pose a significant hazard to the community should an accident occur, to prevent their accidental release, and to minimize consequences should a release occur. Hydrogen chloride, along with the other substances listed under section 112(r)(3), is listed because it is known to cause, or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment (see 59 FR 4478, January 31, 1994). Sources that handle hydrogen chloride in greater quantities than the established threshold quantity under section 112(r)(5) will be subject to the risk management program requirements under section 112(r)(7) (see 58 FR 54190, October 20, 1993).

In essence, the MACT standards mandated by the CAA will ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. In addition, the emission reductions achieved by these proposed standards, when combined with the reductions achieved by other MACT standards, will contribute to achieving the primary goal of the CAA, which is to ''protect and enhance the quality of the Nations's air resources so as to promote the public health and welfare and the productive capacity of its population'' (the CAA, section 101(b)(1)).

C. Affected Sources

Emission points identified from pharmaceuticals production include process vents, equipment leaks, storage tanks, wastewater collection and treatment systems, and heat exchange systems.

The affected source for the purpose of this regulation is the facility-wide collection of process vents, storage

tanks, wastewater and associated treatment residuals, heat exchange systems, cooling towers, and equipment components that are associated with pharmaceutical manufacturing operations. Based on this definition of affected source, new sources are created by reconstructing existing sources or constructing new ''greenfield'' facilities. Also, if an additional pharmaceutical manufacturing process unit(s) is added to a plant site that is a major source, the addition will be subject to the requirements for a new source provided that the addition meets the definition of construction in § 63.2 of subpart A (General Provisions); the new unit has the potential to emit 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP; and the process unit(s) is dedicated.

D. Format of the Standards

The standards for process vents are presented in a combination of percent reduction and mass limit format. Facilities will have the option of using any control technology, as long as the HAP reductions or mass limitations are achieved. The format of the standards for storage tanks are a combination of equipment standard and performance standard—tanks which require control are required to be fitted with floating roofs or with add-on devices meeting a percent removal requirement. The standards for wastewater emission sources offer two alternative formats for achieving compliance, a percent removal, or the use of reference control technologies. Equipment leak standards are in the form of equipment/work practice standards. Facilities would be required to implement the program specified in the proposed regulation to achieve compliance with the standard.

An alternative pollution prevention standard is also being proposed. This standard can be met in lieu of meeting separate standards for the four emission source types associated with each pharmaceutical production process. The format for this alternative standard is in a kg HAP consumption reduction per kg product format.

E. Basis and Level of Proposed Standards

Detailed information describing the approach used to determine MACT floors and regulatory alternatives for the pharmaceuticals production source category can be found in the basis and purpose document.

The proposed standards for existing and new affected sources are summarized in Table 1. The MACT standard for most existing process vents was set at the floor level of control. The MACT floor was determined from the 12 facilities that represented the best performing 12 percent of the existing 101 major sources. The floor was calculated to be 93 percent control facility-wide. The proposed standards would require existing sources to reduce emissions from the sum of all vents within a process to 900 kg/yr (2,000 pounds per year [lb/yr]), considering control, or meet an overall process control level of 93 percent. Both calculations meet the requirements of the floor as determined on a facility wide basis. Additionally, a regulatory alternative beyond the floor was developed that requires 98 percent control of some large vents. An applicability cutoff was developed for this alternative based on a linear equation relating vent flowrate and HAP load. The cost of this alternative above the floor is $1,000/Mg and was judged to be reasonable. Process vents meeting the annual emissions and flowrate criteria are required to achieve 98 percent control, independent of the overall 93 percent requirement.

TABLE 1.—PROPOSED STANDARDS FOR NEW AND EXISTING SOURCES

Emission source	New or existing?	Applicability		Requirement	
		Applicability level	Cutoff	Control efficiency	Emission limit
Process	New	Processes	≥400 lb/yr uncontrolled	98%	
	Existing	Processes	≥2,000 lb/yr controlled	93%; 98% for individual vents meeting cutoff based on flow and emissions.	2,000 lb/yr.
Storage tanks	New and existing.	≥10,000 gal and <20,000 gal	≥1.9 psia vapor pressure of liquid stored.	90%	
		≥20,000	≥1.9 psia vapor pressure of liquid stored.	95%.	
Wastewater	New and existing.	>1 Mg/yr total HAP load from all POD within a process or any single POD.	≥1,300 ppm at POD of Table 2 HAP.	99% reduction of Table 2 HAP.	
			≥5,200 ppmw at POD of total HAP load.	99% reduction of Table 2 HAP. 90% reduction of Table 3 HAP. 95% reduction of total HAP using biotreatment.	
		>1 Mg/yr total HAP load from facility.	≥10,000 ppmw at POD of total HAP load.	99% reduction of Table 2 HAP. 90% reduction of Table 3 HAP. 95% reduction of total HAP using biotreatment.	
	New	>1 Mg/yr total HAP load from all POD within a process or any single POD.	≥110,000 ppmw at POD of Table 3 HAP.	99% reduction of Table 3 HAP.	
Equipment leaks.	New and existing.	All components in HAP service excluding components covered by subpart H.		LDAR program.	

The MACT standard for process vents at new sources was set at the floor level of control. The MACT floor was determined from the best controlled similar source and is based on the most stringent control level achieved for both chemical synthesis and formulation type processes. The proposed standards for new sources would require 98 percent control of process vents with uncontrolled emissions greater than 180 kg/yr (400 lb/yr).

The MACT floor for small, medium, and large storage tanks is 90 percent control for tanks storing liquids with total HAP vapor pressure greater than or equal to 1.9 psia at existing sources. The floor was determined from the twelve facilities that had the highest control level for storage tanks. The EPA evaluated the impacts of a regulatory alternative beyond the floor that would require 95 percent control of tanks greater than or equal to 20,000 gallons. Floating roof technology has been demonstrated to achieve 95 percent control and is considerably less expensive than add-on control; and it can be applied to 20,000 gallon tanks. Therefore, there is no additional cost for the regulatory alternative above the floor. The MACT for new sources is set at the same level as the MACT for existing sources because it has been determined that no facility is controlling tanks beyond the level required by the regulatory alternative for existing sources; therefore MACT would be no less stringent than the floor. The proposed standards would require existing and new sources to control storage tanks having volumes greater than or equal to 38 cubic meters (m^3) (10,000 gallons), and storing material with a vapor pressure of greater than or equal to 13.1 kPa (1.9 psi). The proposed standards require that tanks with capacities greater than or equal to 38 m^3 and less than 75 m^3 be controlled to a level of 90 percent and tanks greater than or equal to 75 m^3 be controlled to 95 percent. One of the following control systems can be applied to meet these requirements:

1. An internal floating roof with specified seals and fittings;
2. An external floating roof with specified seals and fittings;
3. An external floating roof converted to an internal floating roof with specified seals and fittings; or
4. A closed vent system with the appropriate 90 or 95 percent efficient control device.

The MACT floor for wastewater at existing sources was determined to be 54 percent control of HAP from the total wastewater streams at the top twelve facilities. The EPA calculated HAP concentration cutoffs for wastewater streams, cutoffs above which steam stripping of wastewater streams would result in a level of control as stringent as the floor. This approach is similar to the HON and allows for the control of those wastewater streams containing the most significant amount of HAP. The cutoffs represent the MACT floor level of control. The proposed standards would require existing sources to control wastewater with the following characteristics at the point of determination (POD):

1. Streams having partially soluble HAP compound concentrations of 1,300 ppmw or greater and a total yearly process HAP load of 1 Mg/yr or greater or any single POD load of 1 Mg/yr or greater;
2. Streams having a combined total HAP concentration of 5,200 ppmw or greater and a total yearly process HAP load of 1 Mg/yr or greater or any single POD load of 1 Mg/yr or greater; or
3. Streams having a total HAP concentration of 10,000 ppmw with a total facility HAP load of 1 Mg/yr or greater.

The proposed standards require that the control of wastewater emissions be accomplished in one of the following manners:

1. Using a design biotreatment system for soluble HAP;
2. Demonstrating removals achieving 99 percent by weight of partially soluble compounds, and 90 percent by weight of soluble compounds, from treatment systems; or
3. Demonstrating a removal of 95 percent by weight of total organic HAP from treatment systems.

For new sources, the MACT floor for wastewater is based on a facility that currently incinerates a significant percentage of wastewater containing HAP's in an incinerator combusting a mixture of wastes. The proposed standards would require the same applicability and control requirements described above for existing sources plus require an increased removal of solubles (from 90 to 99 percent) for streams having a soluble HAP concentration of 110,000 ppmw at any of the load criteria (1 Mg/yr total HAP from the process, POD, or facility).

The MACT floor for equipment leaks was found to be negligible for new and existing sources. The regulatory alternative above the floor is the implementation of a leak detection and repair program, patterned after 40 CFR part 63 subpart H. The cost of the regulatory alternative was estimated to be $1,000/Mg and was judged to be reasonable. The proposed standards would require that new and existing sources implement a leak detection and repair (LDAR) program that is modified from the program specified in the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart H) to apply specifically to the pharmaceutical industry. The LDAR program specified under subpart H requires specific equipment modifications and work practices that reduce emissions from equipment leaks. Modifications to this program for this rule include the lessening of the monitoring frequency for pumps from monthly to quarterly monitoring (based on the specific data from pharmaceutical manufacturing operations) and the treatment of emissions from receivers and surge control vessels in the process vent provisions. In response to comments received from industry during the standard development process, EPA will consider consolidating the equipment leaks program specified in this subpart (appendix GGGA) with the part of the 40 CFR part 63 subpart H LDAR program that applies to pharmaceutical facilities after promulgation of subpart GGG. The EPA is currently in the process of separately proposing clarifying changes to certain provisions of 40 CFR part 63 subpart H, among them, provisions relating to the monitoring requirements for unsafe and difficult to monitor components. Lastly, based on current industry comments that suggest minimal use of a Quality Improvement Plan (QIP) at pharmaceutical plants, EPA is considering eliminating the requirement of implementing a QIP for the pharmaceutical rule in favor of allowing more frequent monitoring when nominal leakage rates are exceeded and is soliciting comments on whether the QIP should be included in the subpart GGG LDAR program.

1. Alternative Pollution Prevention Standard

The proposed rule also includes a pollution prevention (P2) alternative standard that meets the requirement of the MACT floor and can be implemented in lieu of the requirements described above for existing sources. Two options included in the alternative standard are described in Table 2. The P2 options were developed to provide a way for facilities to comply with the MACT standard by reducing overall consumption of HAP in their processes. This alternative does not apply to HAP that are used as reactants. In the first option, which is applicable to existing processes, owners and operators can satisfy the MACT requirements for all emission source types associated with each process by demonstrating that the

production-indexed consumption of HAP has decreased by 75 percent from a baseline set no earlier than the 1987 calendar year. The production-indexed consumption factor is expressed as kg HAP consumed/kg product produced. The numerator in the kg/kg factor is the total consumption of material, which describes all the different areas where material can be consumed, either through losses to the environment, consumption in the process as a reactant, or otherwise destroyed. Consumption, rather than emissions, is tracked because it can be used as a true measure of pollution prevention; any decrease in consumption for the same unit of product generated must involve some type of increase in process efficiency, including reduction of waste, increased product yield, and in-process recycling. Because HAP are used generally as solvents in this industry, reductions in consumption can be generally associated with reductions in losses to air, water, or solid waste.

TABLE 2.—ALTERNATIVE P2 STANDARD

Option	Description of P2 option
1	Demonstrate a 75% reduction in the kg consumption/kg production factor from a baseline year of 1987.
2	Demonstrate a 50% reduction in the kg/kg and additional reduction from add-on control equivalent to yield 75% overall reduction in kg/kg.

The second option also uses the production-indexed consumption factor and is also applied to existing processes. It encourages and allows owners and operators to supplement reductions achieved with P2 with add-on controls. The EPA believes that such an option will provide greater flexibility and cost efficiency to the operators who already may have some add-on controls. Owners and operators must demonstrate reductions in the kg/kg factor of 50 percent via P2 measures and the remaining 25 percent by add-on controls. A total reduction of 75 percent will be required under both P2 options.

F. Compliance and Performance Test Provisions

1. Proposed Standards

a. *Process Vents.* To determine compliance with the percent reduction requirement for pharmaceutical process vents, uncontrolled and controlled emissions from all process vents within the process shall be quantified to demonstrate the appropriate overall reduction requirements (93 percent or 98 percent). For process vents controlled by devices handling less than 10 tons per year, the owner or operator can either test or use calculational methodologies to determine the uncontrolled and controlled emission rates from individual process vents. For process vents controlled by devices handling more than 10 tons per year, tests are required to determine the reduction efficiency of each device. Performance test provisions have been structured to account for the worst case emissions for devices controlling streams with batch characteristics. Control devices that have previously been tested under conditions required by this standard and condensers are exempt from performance testing.

b. *Storage Tanks and Wastewater.* For demonstrating compliance with various requirements, the proposed rule allows the owners or operators to either conduct performance tests or to document compliance using engineering calculations. Appropriate compliance and monitoring provisions are specified in the regulation.

c. *Equipment Leaks.* To determine compliance with the standard for equipment leaks, facilities will have to demonstrate that a LDAR program meeting the requirements of the LDAR program specified in the rule is in use.

2. Pollution Prevention Alternative Standards

Initial demonstration of compliance with the P2 alternative standards would be accomplished by documenting yearly quantities of HAP raw materials and products using available records, including standard purchasing and accounting records, and calculating the kg/kg values. Procedures are also specified to demonstrate that the required reductions are achieved by the control devices used to meet option 2.

G. Monitoring Requirements

1. Actual Standards

Monitoring is required by the proposed standards to determine whether a source is in compliance on an ongoing basis. This monitoring is done either by continuously measuring emission reductions directly or by continuously measuring a site-specific operating parameter, the value of which is established by the owner or operator during the initial compliance determination. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved on a daily average by itself or in combination with one or more other operating parameter values, determines that an owner or operator is complying with the applicable emission standards. These parameters are required to be monitored at 15-minute intervals throughout the operation of the control device. For devices controlling streams totaling less than 1 ton/yr, only a site-specific periodic verification that the devices are operating as designed is required to demonstrate continuous compliance. Owners and operators must determine the most appropriate method of verification and propose this method to the Agency for approval in the precompliance report, which is due 1 year prior to the compliance date of the standard.

2. Alternative Standard

Owners and operators electing to use the P2 alternative can demonstrate ongoing compliance by calculating a monthly rolling average of the kg HAP/kg factor for each applicable process or portions of the process. In addition, owners and operator electing to use P2 Option 2 would have to monitor the emission reduction obtained through the use of traditional controls using the methods described above.

H. Reporting and Recordkeeping Requirements

The owner or operator of any pharmaceutical source subject to these standards would be required to fulfill all reporting requirements outlined in the General Provisions to 40 CFR part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule. Specific recordkeeping and reporting requirements for each type of emission point are also included in the proposed rule.

V. Summary of Environmental, Energy, Cost, and Economic Impacts

A. Facilities Affected by These NESHAP

These NESHAP would affect pharmaceutical production facilities that are major sources in themselves, or constitute a portion of a major source. There are 270 existing facilities manufacturing pharmaceuticals, 101 of which were assumed to be major sources for the purpose of developing these standards and calculating impacts. The expected rate of growth for the pharmaceutical industry is expected to be 2.4 percent per year through 1998.

B. Air Impacts

The proposed standards would reduce HAP emissions from existing sources by 22,000 (Mg/yr) (24,000 tons per year (tons/yr)) from the baseline level, a reduction of 65 percent from baseline,

and 75 percent from uncontrolled. These reductions would also occur if facilities elect to implement the alternative pollution prevention standard. The proposed standard would also reduce VOC emissions.

C. Water and Solid Waste Impacts

Much of the steam stripping operations will result in recoverable material. However, the new source requirement for very rich soluble HAP-containing wastewater is expected to generate solid waste. An average of 900 tons per year per facility was estimated to determine impacts.

D. Energy Impacts

The proposed standards for the pharmaceuticals source category would require an additional energy usage of 2,400 x 10^9 British thermal units per year (Btu/yr).

E. Cost Impacts

The emission reductions that would be required by this regulation could be met using one or more of several different techniques. To determine costs, certain control scenarios were assumed. The scenarios used in costing were judged to be the most feasible scenarios possible for meeting the requirements of the proposed standards from a technical and cost standpoint. The total control cost includes the capital cost to install the control device, the costs involved in operating the control device, and costs associated with monitoring the device to ensure compliance. Monitoring costs include the cost to purchase and operate monitoring devices, as well as reporting and recordkeeping costs required to demonstrate compliance. Nationwide, the total annual cost of this standard to the industry for existing and new sources is approximately $62 million and $11 million respectively. The EPA believes that monitoring, reporting, and recordkeeping costs will be substantially reduced for the facilities opting to comply via the P2 option. Additionally, EPA also believes that overall control costs will also be substantially reduced as a result of compliance with the P2 option.

F. Economic Impacts

The economic impact analysis of this standard shows that the estimated price increase from compliance with the recommended standard for process vents, storage tanks, and wastewater is 1.1 percent. Estimated reduction in market output is 1.9 percent.

No plant closures are expected from compliance with this set of alternatives. For more information, consult the economic impact report entitled ''Economic Analysis of Air Pollution Regulation Regulations: Pharmaceutical Industry, August 1996.''

VI. Emissions Averaging

Emissions averaging is being considered as part of this rule. The rule includes provisions that permit emissions averaging within existing process vent and storage tank planks. The industry is interested in emissions averaging for only these two emission point types. The provisions consist of a streamlined version of the Hazardous Organic NESHAP (HON) emissions averaging provisions (40 CFR part 63 subpart G) modified specifically for the pharmaceutical industry. However, the constraints are essentially the same as those contained in the HON.

VII. Regulation of the Pharmaceutical Manufacturing Industry Under the Clean Water Act

The Clean Water Act (CWA) and a recent settlement agreement (see 59 FR 25869) require EPA to develop effluent limitations guidelines and standards regulations for certain industrial categories. The Pharmaceutical Manufacturing Industry is one of the categories required to be regulated by this settlement agreement. The EPA's most recent regulatory proposal for the pharmaceutical industry was on May 2, 1995 (60 FR 21592.)

In the May 2, 1995 proposal, EPA proposed best available technology (BAT) economically achievable and new source performance standards (NSPS) regulations for 53 volatile and semivolatile organic pollutants of which 17 are HAP. The Agency also proposed PSES and PSNS for 45 volatile organic pollutants of which 16 are HAP. (Air emissions of HAP by major sources will be controlled by this MACT rule provided that the wastewater streams containing the HAP meet concentration criteria for soluble and partially soluble HAP in today's proposal.)

The EPA identified the following industry subcategories in the proposed effluent guidelines: Fermentation (A), biological and natural extraction (B), chemical synthesis (C) and formulation (D).

The proposed BAT end-of-pipe limitations would control the discharge of 17 HAP and 36 non-HAP at both A and C and B and D manufacturing facilities. The technology basis for the BAT limitations for A and C subcategory facilities was in-plant steam stripping followed by advanced biological treatment while the technology basis of the BAT limitations for B and D subcategory facilities was advanced biological treatment. Since these proposed limitations are set at the end-of-pipe, they would not prevent air emissions of these pollutants prior to discharge.

Also proposed in the May 2, 1995 notice (see coproposal A) were PSES for 8 HAP and 4 non-HAP set in-plant at a point roughly equivalent to the MACT standards point of determination while PSES for 8 other HAP and 25 non-HAP were proposed at the end-of-pipe discharge point. The technology basis for the HAP and non-HAP pollutants alike was steam stripping. Under coproposal B, only in-plant PSES for the eight HAP would be established. The Agency decided to establish an in-plant monitoring point for 12 highly volatile pollutants (including the 8 HAP) because measuring compliance at the end-of-pipe monitoring point was not considered practical for these pollutants due to the high potential for air stripping associated with them and commingling with other process wastewater not containing any of the 12 pollutants. As is the case with the BAT end-of-pipe limitations, the end-of-pipe proposed PSES would not prevent air emissions of HAP at facilities prior to the discharge point to the municipal sewer systems.

The MACT standards being proposed today will control HAP emissions (if promulgated) at major source pharmaceutical plants with steam stripping as the reference control technology. The EPA is considering revising the BAT limitations for subcategories A and C based on only advanced biological treatment performance data. This would in effect shift control of HAP air emissions and wastewater pollutant discharges of the HAP to the MACT standards. With regard to control of non-HAP at major sources, the Agency believes that the significant reductions in HAP emissions required by the proposed MACT standards will also result in incidental reductions in non-HAP air emissions because many non-HAP are found in the same wastewater streams as the HAP, and thus will be steam stripped along with the HAP. While control of air emissions of HAP and non-HAP VOC's will be addressed to some extent under the CAA, additional control of water discharges of the VOC's from direct dischargers needs to be addressed under the Clean Water Act using as a basis the BAT limitations and NSPS proposed on May 2, 1995.

The MACT standards being proposed today would apply to select streams at 60, out of a possible 259, pharmaceutical indirect dischargers deemed to be major sources of air

emissions. Only those streams which meet the flow and concentration cutoffs established for HAP would require control. Assuming that EPA's pass-through analysis does not change and coproposal A is chosen, EPA estimates that today's proposed MACT rule would reduce the load of VOC's to POTW's from pharmaceutical manufacturing plants by approximately 48 percent. Part or all of the remainder of the pollutant loadings to POTW's may need to be controlled by additional pretreatment requirements. The Agency is considering three options for setting pretreatment standards (PSES and PSNS) to address HAP and non-HAP wastewater pollutant discharges not controlled by today's proposed MACT standard.

Under the first option (which has been suggested by commenters), compliance with today's MACT standards would constitute compliance with final PSES and PSNS for all manufacturing subcategories. However, since compliance with the MACT regulation requires only one demonstration by the facility, EPA is considering some form of regular monitoring to verify compliance with wastewater discharge standards. Facilities could either monitor for individual HAP or non-HAP on a regular basis or for some indicator pollutant parameter whose regulatory compliance level would be established at the same time that MACT rule compliance demonstration is performed. This option would result in control of about 48 percent of the VOC pollutant load that is currently being discharged to POTW's by pharmaceutical facilities.

Under the second option, and in addition to the MACT regulations on selected streams at 60 indirect dischargers, EPA would establish pretreatment standards for the streams and pollutants not controlled by the MACT regulations. The level of control dictated by these additional standards would be the same level as that of the MACT standards (90 percent reduction for soluble organics and 99 percent for partially soluble organics). The pretreatment standards could either be in the form of percent reduction requirements for individual pollutants or single number standards resulting from the application of the MACT percent reduction requirements. The EPA estimates that this option would reduce the discharge of pollutants to POTW's by an additional 45 percent over the first option.

The third option would involve promulgating the coproposal A pretreatment standards for all indirect dischargers at the end-of-pipe regulatory point. These pretreatment standards would apply to all streams at facilities designated as major sources regardless of whether the streams were within the concentration cutoffs for HAP and would be established for all pollutants which pass-through. The level of control dictated by these standards would be the coproposal A level with the exception that standards for 12 pollutants which were established in-plant will now be set at the end-of-pipe and adjusted downward to account for dilution due to mixing with other waste streams. Other changes in parameters or limitations may result from the evaluation of comments and receipt of additional performance data. Using the proposed limitations, EPA estimates that this option would reduce the discharge of pollutants to POTW's by an additional 29 percent over the first option.

The EPA is considering revising its pass-through analysis for water soluble, biodegradable pollutants such as methanol, acetone, isopropanol and ethanol based on approaches suggested by commenters on the May 2, 1995 pharmaceutical proposal as well as the approaches used in the Pesticide Chemicals Manufacturing and Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) rulemakings. In general, pollutants are considered to pass-through POTW's if the average percent removal achieved by well operated POTW's is less than that achieved by the BAT model treatment systems. The EPA is considering specifically the methodology modifications employed in the evaluation for phenol, a biodegradable water soluble pollutant as discussed in the Pesticides and OCPSF rulemakings (see 59 FR 50638, 50664–65, September 28, 1993 and 58 FR 36872, 36885–86, July 9, 1993). Among the modifications suggested by the commenters were: (1) Using only data from acclimated POTW systems to determine POTW removal; (2) finding no pass-through for pollutants if the differential between the model BAT percent removal and the POTW percent removal for a pollutant is less than 5 percent and; (3) utilizing a higher Henry's Law Constant cutoff when pass through is determined by the volatile override approach (pollutants which have a higher Henry's Law Constant value than the cutoff are presumed to pass-through using this methodology).

The Agency is reevaluating its proposed pass-through analysis because of the comments received concerning it and to be more consistent with today's proposed MACT standards for soluble organic HAP which allows the biodegradation achieved by POTW's to be included in the compliance demonstration for these pollutants. Today's MACT standards require a demonstration of at least a 90 percent reduction in air emissions from wastewater of water soluble biodegradable HAP. As a result, a finding of pass-through may result in duplicative and somewhat inconsistent control (by water and air regulations) for some pollutants. The EPA solicits comments on possible revisions to its pass-through methodology as applied to water soluble, biodegradable pollutants.

The EPA is soliciting comments on approaches for revising the limitations for direct and indirect dischargers in the proposed effluent guidelines for the pharmaceutical industry (60 FR 21592, May 2, 1995). The intent of all of these approaches is to integrate the regulation of emissions into the air and waters of the United States. If EPA develops any additional data related to the possible revisions, those data will be made available to the public.

The EPA may proceed with final action on the effluent guidelines, taking into account comments and data received in response to this notice.

VIII. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed rule, and on any statement in the preamble or the referenced supporting documents. The proposed rule was developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. In order to receive proper consideration, documentation or data should be provided. This section requests comments on specific issues identified during the development of the standard. Additionally, EPA is soliciting comments regarding the interaction of this standard with the Title V operating permits program.

The EPA is requesting comments and data on establishing the applicability of process vent control requirements on a process basis, as opposed to an equipment or facility basis. The basis and purpose document included in the administrative record outlines the rationale for establishing applicability on a process basis. Second, the EPA is soliciting general comments on the adequacy of emission estimation procedures to determine compliance for batch processes. Comments from State partnership members indicate that some batch operations, such as distillation, may contribute to considerably more emissions than would otherwise be

predicted. In some cases, unless 100 percent capture is achieved by the condenser acting as a recovery device on boiling operations, there may be uncontrolled emissions that are not being estimated. The State partnership members recommend that facilities compare their HAP mass balance to estimated HAP losses. When large discrepancies exist, the facility may need to monitor large process condensers. Third, the EPA is soliciting comments on the definition of a pharmaceutical product and isolated intermediate. In particular, whether Standard Industrial Classification code #283 and coverage by the Food and Drug Administration (FDA) rules are adequate to identify a pharmaceutical process covered by this regulation. The proposed rule considers isolated intermediates to be the same as pharmaceutical products in applicability determinations, e.g., the 2,000 lb/yr cutoff applies to isolated intermediates. The EPA is soliciting comments on the definition of isolated intermediates and the appropriateness of applying the cutoff to isolated intermediates. Fourth, EPA is soliciting comment on the adequacy and appropriateness of the new source MACT requirements for process vents. As set out in the basis and purpose document, EPA set the cutoff and level of control for the floor based on its analysis of the data showing that the characteristics of the emission streams are similar. The industry, however, believes that the basis of the cutoff is not representative of the industry as a whole. The EPA will consider other proposals for setting the cutoff at a less stringent level, taking into consideration statutory and regulatory requirements.

The EPA is soliciting comments on several aspects of performance testing and monitoring. The rule currently requires performance testing to document efficiencies for control devices that are used to reduce uncontrolled emissions of 10 tons per year or more. The rule currently requires that the performance test be conducted under ''worst-case'' conditions and provides for three options—absolute, representative, and hypothetical worst-case. The rule also allows for testing during normal operations. However, because of the noncontinuous, batch nature of processing in this industry, testing under normal conditions may not indicate control device performance under more challenging conditions. Therefore, the proposed rule requires that the test conditions be defined and operation be limited by those conditions that existed during testing. The rule requires that the test conditions be defined in the Precompliance report and characterized by the HAP composition and conditions of vent stream entering the control device. It is because of the batch nature of processing in this industry that the EPA has a higher level of confidence in a facility's compliance with the standard if the performance of the control device has been tested under worst-case conditions. Therefore, testing under less rigorous, normal conditions limits the range of vent stream conditions for which initial compliance has been demonstrated. The EPA is soliciting comments on appropriate test conditions to be defined for different types of control devices, especially scrubbers and carbon adsorbers.

The proposed rule provides for parametric monitoring to comply with the standard and includes specific operating parameters to be monitored. The EPA is soliciting comments on the use of alternative parameters without the requirement of prior notification in the Precompliance report. Parameters other than those specified in the rule that could be used to demonstrate compliance include: (1) or condensers, coolant temperature and flow (only with emissions testing), (2) for scrubbers, measurement of pressure drop or scrubber fluid composition, and (3) for carbon adsorbers, periodic vent testing and/or predetermined scheduled replacement. The EPA is soliciting comment on the adequacy of these parameters for demonstrating continuous compliance with the rule.

An issue raised by industry associated with parametric monitoring is related to the setting of a parameter based on an initial compliance determination at conditions which represent the upper limit (with regard to achievable control) of conditions that will be encountered during the course of operations. The concern is that the rule effectively requires a control level that is greater than the standard because the control devices will presumably achieve higher control on conditions that are below this upper limit, which may occur frequently in this industry because of the predominance of batch processes. The EPA has tried to resolve this issue by allowing owners and operators to set more than one parameter level for a given control device for processes or portions of processes not requiring control levels as high as the worst-case or upper limit. These parametric levels are required to be defined in advance in the Notification of compliance report. If more than one level is set, owners and operators must make a determination of compliance with the standards based on what processes or emission characteristics are routed to the device at the time in which a monitoring reading is taken. Additionally, the determination of an exceedance is based on a maximum of 24 hours worth of data, or 96 15-minute readings, per process. Therefore, readings outside of acceptable ranges can be averaged in with readings that are within range and effectively normalized. The EPA believes that the approach taken offers the industry needed flexibility while preserving the assurance of continuous compliance.

Another issue raised by industry is related to predictability of operations. The industry believes that nondedicated, multiproduct facilities using control devices other than condensers (and, perhaps, combustion devices) for multiple vents may not be able to anticipate all possible operating scenarios for which a separate parametric level would need to be set. The industry has given the example of a scrubber that is used to control emissions from multiple processes. The parametric level that represents compliance with the applicable standard for each process may change depending on what is happening in each process and they argue it would be essentially impossible to predict the exact scrubber flow needed to achieve compliance at any given time. The industry has requested that the standard provide that an excursion from a parametric level does not automatically constitute a violation of the rule, but instead triggers reporting requirements that initiate a permitting authority's review to decide whether the excursion resulted in a violation for this type situation. The EPA has generally taken the position that ''after-the-fact'' justification of excursions is not an appropriate compliance strategy. Based on currently available information, the EPA has not seen a need to change this position. The proposed rule allows the facility flexibility in establishing the parameter monitoring level based on tests, engineering assessments, and/or manufacturers recommendations if included in the Precompliance report and approved. The EPA believes it is necessary to know the HAP load going to the control device to be able to properly operate the device to meet the emission limit (the agency has concerns about the industry's stated inability to predict or know the HAP load at certain times). In cases where the owner cannot predict exactly what is going to the control device over time, the standard provides for doing testing under conditions worse than average to cover

periods of uncertainty. In fact this is the reason for the focus on worst-case in the rule. The EPA is seeking comment on this part of the rule.

Related to testing and monitoring are management of change issues. The EPA is soliciting general comments on the clarity of the rule as it applies to process changes. Management of change issues are also related to title V of the Clean Air Act.

Currently, the Notification of Compliance report is the compliance ''blueprint'' for implementation of the standard. All information regarding documentation of the facility's compliance status with regard to the standard should be included in this report. Process descriptions, emission estimates, control device performance documentation, and continuous compliance demonstration strategies, including monitoring, are to be presented in the report. This report could be incorporated by reference into the facility's title V permit. If a change occurred at the facility which required the submittal of additional information, or if the plant chose to revise procedures that had been previously documented in the notification, this information would be submitted in quarterly reports, thus ensuring that the notification and associated reports would always contain the most current compliance strategy for the facility. Only changes requiring site-specific approval, such as the use of a monitoring parameter that was not specifically identified in the standard, would trigger some significant review action under title V. This would allow the facility enough flexibility to change processes, operating, and compliance procedures as necessary without prior approval, if the changes were straightforward, and would assure that the compliance plan for the facility would always be current. The EPA is also soliciting comments on the incorporation by reference of the Notification of Compliance report into the title V permit, and comments on the types of changes that should trigger review actions under title V.

IX. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed standards for pharmaceutical production processes should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–96–03.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

1. To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and
2. To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, EPA has involved State governments in the development of this rule. These governments will be required to implement the rule. They will collect permit fees which will be used to offset the resource burden of implementing the rule. Representatives of six State governments are members of the MACT partnership. This partnership group was consulted throughout the development of this proposed regulation. Comments from the partnership members were carefully considered. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the final rulemaking.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1781.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, U. S. Environmental Protection Agency, 401 M Street SW. (2137), Washington, DC 20460, or by calling 202–260–2740. The public reporting burden for this collection of information is estimated to average 4,800 hours per respondent for the first year and 2,600 hours per respondent for each of the second and third years, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2137, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C.

553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this rule will not have a significant impact on a substantial number of small entities.

The EPA analyzed the potential impact of the rule on small entities and determined that only 16 of 56 pharmaceutical producing firms are small entities—not a substantial number of entities. Of these 16 firms, only four will experience an increase in costs as a result of the promulgation of today's rule that are greater than 1 percent of revenues. Therefore, the Agency did not prepare an initial regulatory flexibility analysis.

Although the statute does not require EPA to prepare an RFA because the Administrator has certified that the rule will not have a significant economic impact on a substantial number of small entities, EPA did undertake a limited assessment, to the extent it could, of possible outcomes and the economic effect of these on small pharmaceutical entities. The initial version of that evaluation is available in the administrative record for today's action.

G. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed standards do not include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local or Tribal governments, or to the private sector, nor do the standards significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this final rule.

H. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technical issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 20, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

2. It is proposed that part 63 be amended by adding subpart GGG to read as follows:

Subpart GGG—National Emission Standards for Pharmaceuticals Production

Sec.
63.1250 Applicability.
63.1251 Definitions.
63.1252 Standards.
63.1253 Test methods and compliance procedures.
63.1254 Monitoring requirements.
63.1255 Recordkeeping requirements.
63.1256 Reporting requirements.
63.1257 Delegation of authority.
Table 1 to subpart GGG—General Provisions Applicability to Subpart GGG
Table 2 to subpart GGG—Partially Soluble HAPs
Table 3 to subpart GGG—Soluble HAPs
Appendix A to Subpart GGG—Equipment Leaks

Subpart GGG—National Emission Standards for Pharmaceuticals

§ 63.1250 Applicability.

(a) Except as specified in paragraph (d) of this section, the provisions of this subpart apply to pharmaceutical manufacturing operations located at a major source of hazardous air pollutant emissions.

(b) The affected source subject to this subpart is the facility-wide collection of pharmaceutical process vents, storage tanks, wastewater and associated treatment residuals, heat exchange systems, cooling towers, and equipment components (pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems) associated with pharmaceutical manufacturing operations.

(c) If an additional pharmaceutical manufacturing process unit(s) is added to a plant site that is a major source, as defined in section 112(a) of the Act, the addition shall be subject to the requirements for a new source in this subpart if: It is an addition that meets the definition of construction in § 63.2 of subpart A of this part; the addition has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of

HAP, unless the Administrator establishes a lesser quantity; and the process unit(s) is dedicated to the manufacture of a single product or isolated intermediate.

(d) Table 1 specifies the provisions of subpart A that apply to an owner or operator of an affected source subject to this subpart, and clarifies specific provisions in subpart A as necessary for this subpart.

(e) The provisions of this subpart do not apply to research and development facilities.

(f) The compliance dates for affected sources are as follows:

(1) An owner or operator of an existing affected source must comply with the provisions of this subpart within 3 years after the effective date of the standard.

(2) An owner or operator of a new or reconstructed affected source must comply with the provisions of this subpart immediately upon startup.

(3) Notwithstanding the requirements of paragraphs (f)(1) and (2) of this section, a new source which commences construction or reconstruction after April 2, 1997 and before effective date of final rule shall not be required to comply with such promulgated standard until 3 years after the date of promulgation if:

(i) The promulgated standard is more stringent than the proposed standard; and

(ii) The owner or operator complies with the standard as proposed during the 3-year period immediately after the effective date.

(g) For batch processes, the provisions of this subpart also apply during startup and shutdown. Periods of malfunction are regulated according to § 63.6 of subpart A.

(h) This subpart applies to all equipment leak emissions in the source category not covered by 40 CFR part 63 subpart I, which requires the implementation of subpart H requirements for components in methylene chloride and carbon tetrachloride service in pharmaceutical chemical synthesis operations. The requirements proposed in this rule do not affect the requirements of subpart I or H for these components. Only components not currently identified and affected by subpart I are considered in this standard.

§ 63.1251 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section. If the same term is defined in subpart A of this part and in this section, it shall have the meaning given in this section for the purposes of subpart GGG.

Air pollution control device means equipment installed on a process vent storage tank, wastewater treatment exhaust stack, or combination thereof that reduces the mass of HAP emitted to the air. Examples include incinerators, carbon adsorption units, condensers, and gas absorbers. Process condensers are not considered air pollution control devices.

Batch cycle refers to manufacturing an intermediate or product from start to finish in a batch unit operation.

Batch emission episode means a discrete venting episode that may be associated with a single unit operation. A unit operation may have more than one batch emission episode. For example, a displacement of vapor resulting from the charging of a vessel with HAP will result in a discrete emission episode that will last through the duration of the charge and will have an average flowrate equal to the rate of the charge. If the vessel is then heated, there will also be another discrete emission episode resulting from the expulsion of expanded vapor. Both emission episodes may occur in the same vessel or unit operation. There are possibly other emission episodes that may occur from the vessel or other process equipment, depending on process operations.

Batch operation or Batch process means a noncontinuous operation involving intermittent or discontinuous feed into equipment, and, in general, involves the emptying of the equipment after the batch operation ceases and prior to beginning a new operation. Addition of raw material and withdrawal of product do not occur simultaneously in a batch operation.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device or back into the process.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of HAP vapors.

Consumption means the makeup quantity of HAP entering a process that are not used as reactant. The quantity of material used as reactant is the theoretical amount needed assuming a 100 percent stoichiometric conversion. Makeup is the net amount of material that must be added to the process to replenish losses.

Container, as used in the wastewater provisions, means any portable waste management unit that has a capacity greater than or equal to 0.1 m^3 in which a material is stored, transported, treated, or otherwise handled. Examples of containers are drums, hoses, barrels, tank trucks, barges, dumpsters, tank cars, dump trucks, and ships.

Continuous process means a process where the inputs and outputs flow continuously throughout the duration of the process. Continuous processes are typically steady state.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Controlled HAP emissions means the quantity of HAP discharged to the atmosphere. If no air pollution control devices are present, controlled emissions are the same as uncontrolled emissions.

Cover, as used in the wastewater provisions, means a device or system which is placed on or over a waste management unit containing wastewater or residuals so that the entire surface area is enclosed and sealed to minimize air emissions. A cover may have openings necessary for operation, inspection, and maintenance of the waste management unit such as access hatches, sampling ports, and gauge wells provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a wastewater tank, a lid installed on a container, and an air-supported enclosure installed over a waste management unit.

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a storage vessel or waste management unit with no fixed roof.

Fill or filling means the introduction of hazardous air pollutant into a storage vessel or the introduction of a wastewater stream or residual into a waste management unit, but not necessarily to complete capacity.

Fixed roof means a cover that is mounted on a waste management unit or storage vessel in a stationary manner and that does not move with fluctuations in liquid level.

Floating roof means a cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and waste management unit or storage vessel wall.

Hard-piping means tubing that is manufactured and properly installed using good engineering judgment and standards, such as ANSI B31–3.

Individual drain system means the stationary system used to convey wastewater streams or residuals to a waste management unit. The term includes hard piping, all process drains and junction boxes, together with their associated sewer lines and other junction boxes, manholes, sumps, and lift stations, conveying wastewater streams or residuals. A segregated stormwater sewer system, which is a drain and collection system designed and operated for the sole purpose of collecting rainfall-runoff at a facility, and which is segregated from all other individual drain systems, is excluded from this definition.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel or waste management unit that has a permanently affixed roof.

Isolated intermediate means any intermediate that is removed from process equipment for temporary or permanent storage or transferred to shipping containers.

Junction box means a manhole or access point to a wastewater sewer system line or a lift station.

Liquid-mounted seal means a foam liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel or waste management and the floating roof. The seal is mounted continuously around the vessel or unit.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transferred temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss From External Floating-Roof Tanks (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83 (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(4) Any other method approved by the Administrator.

Metallic shoe seal or mechanical shoe seal means a metal sheet that is held vertically against the wall of the storage vessel by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Partially soluble HAP means a HAP listed in Table 2 of this subpart.

Pharmaceutical manufacturing process unit (PMPU) means any processing equipment assembled to process materials and manufacture a pharmaceutical product and associated storage tanks, wastewater management units, or components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are used in the manufacturing of a pharmaceutical product.

Pharmaceutical manufacturing operations include PMPU's and other processes and operations as well as associated equipment such as heat exchange systems that are located at a facility for the purpose of manufacturing pharmaceuticals.

Pharmaceutical product means any material described by the standard Industrial Classification (SIC) Code 283, or any other fermentation, biological or natural extraction, or chemical synthesis product regulated by the Food and Drug Administration, including components (excluding excipients) of pharmaceutical formulations, or intermediates used in the production of a pharmaceutical product.

Point of determination means the point where a wastewater stream exits the process or processes, storage tank, or equipment. The POD may be at the equipment or following the last recovery device.

Process means a logical grouping of processing equipment which collectively function to produce a pharmaceutical product or isolated intermediate. A process may consist of one or more unit operations. For the purpose of this subpart, process includes all or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a product or isolated intermediate. The physical boundaries of a process are flexible, providing a process ends with a product or isolated intermediate, or with cessation of onsite processing. Nondedicated solvent recovery and nondedicated formulation operations are considered single processes that are used to recover or formulate numerous materials and/or products.

Process condenser means a condenser whose primary purpose is to recover material as an integral part of a unit operation. The condenser must support a vapor-to-liquid phase change for periods of source equipment operation that are above the boiling or bubble point of substance(s). Examples of process condensers include distillation condensers, reflux condensers, process condensers in line prior to the vacuum source, and process condensers used in stripping or flashing operations.

Process tank means a tank that is physically located within the bounds of a process that is used to collect material discharged from a feedstock storage tank or unit operation within the process and transfer this material to another unit operation within the process or a product storage tank. Surge control vessels and bottoms receivers that fit these conditions are considered process tanks.

Process vent means a vent from a unit operation through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottom receivers, surge control vessels, reactors, filters, centrifuges, and process tanks. Process vents do not include vents on storage tanks regulated under § 63.1252(b), vents on wastewater emission sources regulated under § 63.1252(d), or pieces of equipment regulated under § 63.1252(e).

Production-indexed HAP consumption factor is the result of dividing the annual consumption of total HAP by the annual production rate, per process.

Production-indexed volatile organic compound (VOC) consumption factor is the result of dividing the annual consumption of total VOC by the annual production rate, per process.

Publicly owned treatment works (POTW) means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature as defined in section 212(2)(A) of the Clean Water Act, as amended (33 U.S.C. 1292(2)(A)). A POTW includes the treatment works, intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The POTW is defined at 40 CFR 403.3(0).

Reactor means a device or vessel in which one or more chemicals or

reactants, other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed.

Recovery device means an individual unit of equipment used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Air pollution control devices are not recovery devices. Process condensers are recovery devices. Other examples of equipment that may be recovery devices include organic removal devices such as decanters, strippers, or thin-film evaporation units.

Research and development facility means research or laboratory operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

Residual means any HAP-containing liquid or solid material that is removed from a wastewater stream by a waste management unit or treatment process that does not destroy organics (nondestructive unit). Examples of residuals from nondestructive wastewater management units are: The organic layer and bottom residue removed by a decanter or organic-water separator and the overheads from a steam stripper or air stripper. Examples of materials which are not residuals are: Silt; mud; leaves; bottoms from a steam stripper or air stripper; and sludges, ash, or other materials removed from wastewater being treated by destructive devices such as biological treatment units and incinerators.

Sewer line means a lateral, trunk line, branch line, or other conduit including, but not limited to, grates, trenches, etc., used to convey wastewater streams or residuals to a downstream waste management unit.

Single-seal system means a floating roof having one continuous seal that completely covers the space between the wall of the storage vessel and the edge of the floating roof. This seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Soluble HAP means a HAP listed in Table 3 of this subpart.

Storage tank means a tank or other vessel that is used to store organic liquids that contain one or more HAP. The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing organic liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process tanks.

Surface impoundment means a waste management unit which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or waste containing free liquids. A surface impoundment is used for the purpose of treating, storing, or disposing of wastewater or residuals, and is not an injection well. Examples of surface impoundments are equalization, settling, and aeration pits, ponds, and lagoons.

Treatment process means a specific technique that removes or destroys the organics in a wastewater or residual stream such as a stream stripping unit, thin-film evaporation unit, waste incinerator, biological treatment unit, or any other process applied to wastewater streams or residuals to comply with § 63.138 of this subpart. Most treatment processes are conducted in tanks. Treatment processes are a subset of waste management units.

Uncontrolled HAP emissions means a gas stream containing HAP which has exited the last recovery device, but which has not yet been introduced into an air pollution control device to reduce the mass of HAP in the stream. If the process vent is not routed to an air pollution control device, uncontrolled emissions are those HAP emissions released to the atmosphere.

Unit operation means those processing steps that occur within distinct equipment that are used, among other things, to prepare reactants, facilitate reactions, separate and purify products, and recycle materials. Equipment used for these purposes includes but is not limited to reactors, distillation columns, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor-mounted seal means a continuous seal that completely covers the annular space between the wall, the storage vessel or waste management unit and the edge of the floating roof and is mounted such that there is a vapor space between the stored liquid and the bottom of the seal.

Volatile organic compounds are defined in 40 CFR part 51, § 51.100.

Wastewater means water containing partially soluble or soluble HAP that is discarded from equipment that is part of the affected source and that is not exempted by the provisions of § 63.1252(d)(2). For the purposes of this subpart, noncontact cooling water is not considered a wastewater stream.

Waste management unit means a component, piece of equipment, structure, or transport mechanism in conveying, storing, treating, or disposing of wastewater streams or residuals. Examples of waste management units include wastewater tanks, air flotation units, surface impoundments, containers, oil-water or organic-water separators, individual drain systems, biological treatment units, waste incinerators, and organic removal devices such as steam and air stripper units, and thin film evaporation units. If such equipment is used for recovery then it is part of a pharmaceutical process and is not a waste management unit.

Wastewater tank means a stationary waste management unit that is designed to contain an accumulation of wastewater or residuals and is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support. Wastewater tanks used for flow equalization are included in this definition.

Water seal controls means a seal pot, p-leg trap, or other type of trap filled with water (e.g., flooded sewers that maintain water levels adequate to prevent air flow through the system) that creates a water barrier between the sewer line and the atmosphere. The water level of the seal must be maintained in the vertical leg of a drain in order to be considered a water seal.

§ 63.1252 Standards.

(a) Each owner or operator of any affected source subject to the provisions of this subpart shall control HAP emissions to the level specified in this section on and after the compliance dates specified in § 63.1250 of this subpart.

(b) Storage tanks:

(1) The owner or operator of a storage tank meeting the criteria of paragraph (b)(1)(i) of this section is subject to the requirements of paragraph (b)(2) of this section. The owner or operator of a storage tank meeting the criteria of paragraph (b)(1)(ii) of this section is subject to the requirements of paragraph (b)(3) of this section.

(i) A storage tank with a design capacity greater than or equal to 38 m^3

(10,000 gallons) but less than 75 m^3 (20,000 gallons), and storing a liquid for which the maximum true vapor pressure of total HAP is greater than or equal to 13.1 kPa (1.9 psia).

(ii) A storage tank with a design capacity greater than or equal to 75 m^3 storing a liquid for which the maximum true vapor pressure of total HAP is greater than or equal to 13.1 kPa.

(2) The owner or operator of a storage tank shall equip the affected storage tank with either a fixed roof with internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, or a closed vent system with control device that reduces inlet emissions of total HAP by 90 percent or greater, as demonstrated through the test methods and procedures in § 63.1253(c).

(3) The owner or operator of a storage tank shall equip the affected storage tank with either a fixed roof with internal floating roof, an external floating roof, an external floating roof converted to an internal floating roof, or a closed vent system with control device that meets the requirements of paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) Except as provided in paragraph (b)(3)(ii) of this section, the control device shall be designed and operated to reduce inlet emissions of total HAP by 95 percent or greater, as demonstrated through the test methods and procedures in § 63.1253(c).

(ii) If the owner or operator can demonstrate that a control device installed on a storage tank on or before April 2, 1997, is designed to reduce inlet emissions of total HAP by greater than or equal to 90 percent but less than 95 percent, then the control device is required to be operated to reduce inlet emissions of total HAP by 90 percent or greater, as demonstrated through the test methods and procedures in § 63.1253(c).

(c) Process vents:

(1) The owner or operator of an existing affected source must comply with the process vent requirements of paragraphs (c)(2) and (c)(4) of this section or the requirements of paragraphs (c)(3) and (c)(4) of this section. The owner or operator of a new affected source must comply with the process vent requirements of paragraph (c)(5) of this section. Compliance with the required emission reductions shall be demonstrated through the applicable test methods and compliance procedures described in § 63.1253 of this subpart.

(2) Annual controlled HAP emissions shall not exceed 900 kilograms per year (2,000 pounds per year) from the sum of all process vents within a process that do not meet the criteria specified in paragraph (c)(4)(i) of this section.

(3) Annual uncontrolled HAP emissions from the sum of all process vents within a process that do not meet the criteria specified in paragraph (c)(4)(i) of this section shall be reduced by 93 percent or greater.

(4) Annual uncontrolled HAP emissions from each process vent meeting the requirements of paragraph (c)(4)(i) of this section and not meeting the requirements of paragraph (c)(4)(ii) of this section shall be reduced by 98 percent or greater.

(i) Process vents having a flowrate equal to or less than the flowrate calculated when multiplying the annual uncontrolled HAP emissions, in lb/yr, by 0.02 and subtracting 1,000 according to the following equation:

$$FR = 0.02*(HL)-1,000$$

Where:

FR = flowrate, scfm,

HL = yearly uncontrolled HAP emissions, lb/yr;

(ii) If the owner or operator can demonstrate that a control device, installed on a process vent subject to the requirements of paragraph (c)(4)(i) of this section on or before April 2, 1997, was designed to reduce uncontrolled HAP emissions of total HAP by greater than or equal to 93 percent but less than 98 percent, then the control device is required to be operated to reduce inlet emissions of total HAP by 93 percent or greater.

(5) If the annual uncontrolled HAP emissions from the sum of all the process vents within a process is greater than 180 kg/yr (400 lb/yr) then the owner or operator shall reduce annual uncontrolled HAP emissions from the sum of all process vents within a process by 98 percent.

(d) Wastewater:

(1) The owner or operator of a new or existing affected source discharging wastewater with the concentrations described in paragraphs (d)(1)(i) through (d)(1)(v) of this section at the point of determination (POD) must comply with the provisions of paragraphs (d)(3) through (d)(4)(ii) of this section. The owner or operator of a new source discharging wastewater with concentrations described in paragraph (d)(1)(vi) of this section at the POD must comply with the provisions of paragraph (d)(4)(i) or (d)(4)(ii)(A) and (d)(4)(iii) of this section.

(i) Wastewater containing partially soluble HAP at a total concentration of greater than 1,300 parts per million by weight (ppmw) from any POD within a process with a total yearly load of soluble and/or partially soluble HAP of greater than 1 megagram per year (Mg/yr).

(ii) Wastewater containing partially soluble and/or soluble HAP at a total concentration of greater than 5,200 ppmw from any POD within a process with a total yearly load of soluble and/or partially soluble HAP of greater than 1 Mg/yr of total HAP.

(iii) Wastewater with a concentration of partially soluble and/or soluble HAP of greater than 10,000 ppmw total HAP at facilities that discharge greater than 1 Mg/yr of soluble and/or partially soluble HAP in the total yearly volume of all wastewaters generated.

(iv) Wastewater containing partially soluble HAP at a total concentration of greater than 1,300 parts per million by weight (ppmw) from any single POD with a total yearly load of soluble and/or partially soluble HAP of greater than 1 Mg/yr.

(v) Wastewater containing partially soluble and/or soluble HAP at a total concentration of greater than 5,200 ppmw from any single POD with a total yearly load of soluble and/or partially soluble HAP from any single POD of greater than 1 Mg/yr.

(vi) Wastewater containing soluble HAP at a total concentration of greater than 110,000 ppmw from any POD within a process or from any single POD with a total yearly load of soluble and/or partially soluble HAP of greater than 1 Mg/yr of total HAP.

(2) The following wastewaters are not subject to the wastewater provisions of this part:

(i) Stormwater from segregated sewers;

(ii) Water from fire-fighting and deluge systems, including testing of such systems;

(iii) Spills; and

(iv) Water from safety showers.

(3) An owner or operator of a facility shall comply with the requirements of §§ 63.133 through 63.137, and the control device requirements and inspection requirements of §§ 63.139 and 63.148, respectively, of subpart G for each waste management unit or treatment process that receives an affected wastewater. The affected wastewater for purposes of this subpart is synonymous with the ''Group 1'' identification for wastewater used in the provisions of subpart F and G. Also for the purposes of this subpart, tanks for which it can be demonstrated that less than 5 percent of the total soluble and/or partially soluble HAP is emitted from a wastewater tank described in § 63.133(a)(1), in addition to a tank with surface agitation, shall be equipped with a fixed roof. The owner or operator shall also comply with the treatment

requirements specified in paragraphs (d)(4) or (d)(5) of this section for each affected wastewater stream.

(4) Each affected wastewater stream shall be treated by one of the following methods:

(i) Recycle to the process in accordance with the requirements specified in § 63.138(f). Once a wastewater stream is returned to the process, the wastewater stream is no longer subject to this section.

(ii) Treat using a waste management unit or treatment process which meets conditions in paragraph (d)(4)(ii)(A) and (B) or (C) of this section:

(A) Reduces, by removal or destruction, the total mass of each individual partially soluble HAP by 99 percent, as determined by the procedures specified in § 63.145(c), 63.145(d), or 63.138(j); or to a level less than 50 parts per million by weight of total partially soluble HAP as determined by the procedures specified in § 63.145(b). This option shall not be used when the treatment process is a biological treatment process, or when the wastewater stream is designated as a Group 1 wastewater stream as specified in § 63.132(e). Dilution shall not be used to achieve compliance with this option. Treatment process residuals shall be treated according to § 63.138(h) or § 63.138(m).

(B) Reduces, by removal or destruction, the total mass of each individual soluble HAP by 90 percent, as determined by the procedures specified in §§ 63.145(c), 63.145(d), or § 63.138(j). Treatment process residuals shall be treated according to § 63.138(h) or § 63.138(m).

(C) Reduces, by biological treatment, the mass of total soluble and partially soluble HAP in wastewater for all pharmaceutical processes at the facility by 95 percent, as determined by the procedures specified in 40 CFR part 63 appendix C.

(iii) Treat using a waste management unit or treatment process which reduces, by removal or destruction, the total mass of each soluble HAP by 99 percent, as determined by the procedures specified in §§ 63.145(c), 63.145(d), or § 63.138(j). Treatment process residuals shall be treated according to § 63.138(h) or § 63.138(m).

(5) As an alternative to the treatment requirements in paragraph (d)(4)(ii)(B) of this section, an owner or operator may elect to treat affected wastewaters containing soluble HAP and less than 50 ppmw partially soluble HAP in the following manner if it can be demonstrated that less than 5 percent of the total soluble HAP is emitted from the municipal sewer system:

(i) Treat in an enhanced biological treatment system that meets all of the following criteria:

(A) The biological treatment system is an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles the recovered biomass to the aeration unit;

(B) The mixed liquor volatile suspended solids (biomass) is greater than 1 kg/m^3 homogeneously distributed throughout each aeration unit;

(C) The biomass in the enhanced biotreatment system is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation; and

(D) The enhanced biotreatment system is in compliance with requirements of the permitting authority.

(ii) Treat in a publicly-owned treatment works (POTW) that meets all of the following criteria:

(A) The POTW uses biological treatment that meets the criteria of paragraph (d)(5)(i) of this section.

(B) The POTW is in compliance with the General Pretreatment Regulations in 40 CFR part 403, including any applicable categorical pretreatment standards, and has pretreatment permit or equivalent approval under the authority of 40 CFR part 403.

(C) The POTW is in compliance with all applicable pretreatment standards adopted at 40 CFR part 439.

(6) For each treatment process used to comply with the requirements of paragraph (d)(4) of this section, the owner or operator shall comply with § 63.138(i), (k), and (l).

(7) Except as provided in paragraph (d)(7)(i) and (ii) of this section, the owner or operator shall not discharge a separate phase that can be isolated through gravity separation from the aqueous phase to a wastewater management or treatment unit.

(i) Owners and operators discharging a separate organic phase shall separate and treat the organic according to § 63.138(h).

(ii) Owners and operators shall treat any aqueous phases having the characteristics of paragraphs (d)(1)(i) through (d)(1)(iv) of this section according to the requirements of paragraphs (d)(3) through (d)(6) of this section.

(e) Equipment leaks: The owner or operator shall comply with the requirements of Appendix A to this subpart GGG.

(f) Planned routine maintenance: The specifications and requirements in paragraphs (b) and (c) of this section for control devices do not apply during periods of planned routine maintenance. Maintenance wastewaters meeting the criteria for control as specified in paragraph (d)(1) of this section shall be treated in accordance with the requirements of paragraphs (d)(3) through (d)(7) of this section.

(g) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraphs (b) and (c) of this section, as applicable, shall not exceed 240 hours per year.

(h) Pollution prevention alternative: Except as provided in paragraph (h)(1) of this section, owners and operators may choose to meet the pollution prevention alternative requirement specified in either paragraph (h)(2) or (h)(3) of this section for any process, in lieu of the requirements specified in paragraphs (b), (c), (d), and (e) of this section. Compliance with paragraphs (h)(2) and (h)(3) of this section shall be demonstrated through the procedures in § 63.1253(f).

(1) Processes emitting HAP that are generated in the process must be controlled according to the requirements of paragraphs (b), (c), (d), and (e) of this section.

(2) The production-indexed HAP consumption factor (kg HAP consumed/kg produced) shall be reduced by 75 percent from an average baseline established no earlier than the 1987 calendar year, or the first year thereafter in which the process was operational and data are available. No increase in the production-indexed VOC consumption factor for the applicable period of demonstration shall occur.

(3) Both requirements specified in paragraphs (h)(3)(i) and (ii) of this section are met.

(i) The production-indexed HAP consumption factor (kg HAP consumed/kg produced) shall be reduced by 50 percent from an average baseline established no earlier than the 1987 calendar year, or the first year thereafter in which the process was operational and data is available. No increase in the production-indexed VOC consumption factor for the applicable period of demonstration shall occur.

(ii) The total process HAP emissions shall be reduced from an uncontrolled baseline by an amount, in kg/yr, that, when divided by the annual production rate, in kg, will yield a value of at least 25 percent of the average baseline HAP production-indexed consumption factor established in paragraph (h)(3)(i) of this section. The annual reduction in HAP

air emissions must be due to the use of the following control devices:

(A) Combustion control devices such as incinerators, flares or process heaters.

(B) Recovery control devices such as condensers and carbon adsorbers whose recovered product is destroyed or shipped offsite for destruction.

(C) Any control device that does not ultimately allow for recycling of material back to the process.

(D) Any control device for which the owner or operator can demonstrate that the use of the device in controlling HAP emissions will have no effect on the production-indexed consumption factor for the process.

(i) Heat exchange systems: Except as provided in paragraph (i)(2) of this section, owners and operators of affected sources shall comply with the requirements in paragraphs (i)(1) of this section for heat exchange systems that cool process equipment or materials used in pharmaceutical manufacturing operations.

(1) The heat exchange system shall be treated according to the provisions of § 63.104.

(2)(i) The monitoring frequency shall be no less than quarterly.

(ii) The owner or operator of heat exchange systems which meet current good manufacturing practice (CGMP) requirements at 21 CFR part 211 may elect to use the physical integrity of the reactor as the surrogate indicator of heat exchange system leaks.

(j) Emissions averaging provisions: With the exception of paragraphs (j)(1) through (j)(5) of this section, owners or operators of storage tanks or processes subject to paragraph (b) or (c) of this section may choose to comply with the emission standards in paragraph (b) or (c) of this section by using emissions averaging requirements specified in § 63.1253(h) or (i) of this subpart for any storage tank or process.

(1) A State may restrict the owner or operator of an existing source to use only the procedures in § 63.1252(b) and (c) to comply with the emission standards where State Authorities prohibit averaging of HAP emissions.

(2) Emission sources subject to the requirements of paragraphs (b)(3)(ii) and (c)(2), (c)(4), and (c)(5) of this section may not be included in any averaging group.

(3) Processes which have been permanently shutdown or storage tanks permanently taken out of HAP service may not be included in any averaging group.

(4) Processes and storage tanks already controlled on or before November 15, 1990 may not be included in an emissions averaging group, except where the level of control is increased after November 15, 1990. In these cases, the uncontrolled emissions shall be the controlled emissions as calculated on November 15, 1990 for the purpose of determining the uncontrolled emissions as specified in § 63.1253(h) and (i) of this subpart.

(5) Emission points controlled to comply with a State or Federal rule other than this subpart, unless the level of control has been increased after November 15, 1990 above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the point is subsequently made subject to a State or Federal rule other than this subpart, the point can continue to generate emissions averaging credit for the purpose of complying with the previously approved average.

(6) Not more than 20 processes and 20 tanks at an affected source may be included in an emissions averaging group.

(7) Compliance with the emissions standards in paragraph (b) of this section shall be satisfied when the overall percent reduction efficiency is greater than or equal to 90 percent for those tanks meeting the requirements of paragraph (b)(1)(i) of this section and 95 percent for those tanks meeting the requirements of paragraph (b)(1)(ii) of this section, as demonstrated using the test methods and compliance procedures specified in § 63.1253(h) of this subpart.

(8) Compliance with the emissions standards in paragraph (c) of this section shall be satisfied when the overall percent reduction efficiency is greater than or equal to 93 percent, as demonstrated using the test methods and compliance procedures specified in § 63.1253(i) of this subpart.

§ 63.1253 Test methods and compliance procedures.

(a) Emissions testing or engineering evaluations, as specified in paragraphs (c), (d), (e), and (f) of this section, are required to demonstrate initial compliance with § 63.1252 (b), (c), (d), and (h) respectively, of this subpart.

(b) Test methods: When testing is conducted to measure emissions from an affected source, the test methods specified in paragraphs (b)(1) through (b)(9) of this section shall be used.

(1) EPA Method 1 or 1A of appendix A of part 60 is used for sample and velocity traverses.

(2) EPA Method 2, 2A, 2C, or 2D of appendix A of part 60 is used for velocity and volumetric flow rates.

(3) EPA Method 3 of appendix A of part 60 is used for gas analysis.

(4) EPA Method 4 of appendix A of part 60 is used for stack gas moisture.

(5) EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(6) Methods 25A, 26 and/or Methods 18 and 25A, as appropriate, of appendix A of part 60 shall be used to determine the HAP concentration of air exhaust streams.

(7) Test conditions and durations shall be as specified in paragraphs (b)(7)(i) through (b)(7)(v) of this section, as appropriate.

(i) Testing of process vents on equipment operating as part of a continuous process will consist of three l-hour runs. Gas stream volumetric flow rates shall be measured every 15 minutes during each 1-hour run. The HAP concentration shall be determined from samples collected in an integrated sample over the duration of each l-hour test run, or from grab samples collected simultaneously with the flow rate measurements (every 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. For continuous gas streams, the emission rate used to determine compliance shall be the average emission rate of the three test runs.

(ii) Testing of process vents on equipment where the flow of gaseous emissions is intermittent (batch operations) shall include testing for the worst-case episode or aggregated episodes in the batch cycle or cycles (in the event that equipment may be manifolded and vented through a common stack) or testing under normal conditions, provided that the operation of the device is limited to those conditions that existed during testing under representative worst-case or normal conditions. Testing shall be conducted at absolute worst-case conditions, representative worst-case conditions, hypothetical worst-case conditions, or normal conditions as required by paragraph (d)(3)(iii) of this section. Gas stream volumetric flow rates shall be measured at 15-minute intervals. The HAP or TOC concentration shall be determined from samples collected in an integrated sample over the duration of the test, or from grab samples collected simultaneously with the flow rate measurements (every 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate

shall be adjusted proportionally to reflect variations in flow rate. The absolute worst-case, representative worst-case, or hypothetical worst-case conditions shall be characterized by the criteria presented in paragraphs (b)(7)(ii)(A), (B), and (C) of this section. In all cases, a site-specific plan shall be submitted to the administrator for approval prior to testing in accordance with § 63.7(c). The test plan shall include the emissions profile described in paragraph (b)(7)(iii) of this section.

(A) Absolute worst-case conditions are defined by any of the criteria presented in paragraphs (b)(7)(ii) (A) (1) through (3) of this section.

(*1*) The period in which the inlet to the control device will contain at least 50 percent of the maximum HAP load (in lb) capable of being vented to the control device over any 8 hour period. An emission profile as described in paragraph (b)(7)(iii) of this section shall be used to identify the 8-hour period that includes the maximum projected HAP load.

(*2*) A 1-hour period of time in which the inlet to the control device will contain the highest HAP mass loading rate, in lb/hr, capable of being vented to the control device. An emission profile as described in paragraph (b)(7)(iii) of this section shall be used to identify the 1-hour period of maximum HAP loading.

(*3*) If a condenser is used as a control device, absolute worst-case conditions shall represent a 1-hour period of time in which the gas stream capable of being vented to the condenser will require the maximum heat removal capacity, in Btu/hr, to cool the stream to a temperature that, upon calculation of HAP concentration, will yield the required removal efficiency for the process. The calculation of maximum heat load shall be based on the emission profile described in paragraph (b)(7)(iii) of this section and a concentration profile that will allow calculation of sensible and latent heat loads.

(B) Representative worst-case conditions are defined by any of the criteria presented in paragraph (b)(7)(ii)(A) (*1*) through (*2*) of this section. Representative worst-case conditions shall include the worst-case process as well as any other processes that are emitting to the control device during the test.

(*1*) A 1-hour period of time that contains the highest HAP mass loading rate, in lb/hr, from a single process;

(*2*) If a condenser is used as the control device, the 1-hour period of time in which the vent from a single process will require the maximum heat removal capacity, in BTU/hr, to cool the stream to a temperature that, upon calculation of HAP concentration, will yield the required removal efficiency for the process.

(C) Hypothetical worst-case conditions are simulated test conditions that, at a minimum, contain the highest total average hourly HAP load of emissions that would be predicted to be vented to the control device from the emissions profile described in paragraph (b)(7)(iii) of this section.

(iii) For batch operations, the owner or operator may choose to perform tests only during those periods of the worst-case conditions that the owner or operator selects to control as part of achieving the required emission reduction. The owner or operator must develop an emission profile for the vent to the control device, based on either process knowledge, engineering analyses, or test data collected, to identify the appropriate test conditions. The emission profile must include average HAP loading rate (in lb/hr) versus time for all emission episodes within processes that could contribute to the vent stack for a period of time that is sufficient to include all processes venting to the stack. Examples of information that could constitute process knowledge include calculations based on material balances, and process stoichiometry. Previous test results may be used provided the results are still relevant to the current process vent stream conditions. The average hourly HAP loading rate may be calculated by first dividing the HAP emissions from each episode by the duration of each episode, in hours, and selecting the highest hourly block average.

(iv) For testing of process vents of duration greater than 8 hours, the owner or operator is required to perform a maximum of 8 hours of testing. The test period must include the one hour period in which the highest HAP loading rate, in lb/hr, is predicted by the emission profile.

(v) For testing durations of greater than 1 hour, the emission rate from a single test run may be used to determine compliance. For testing durations less than or equal to 1 hour, testing shall include three 1-hour runs.

(8) For emission streams controlled using condensers, a direct measurement of condenser outlet gas temperature to be used in predicting upper concentration limits at saturated conditions is allowed in lieu of concentration measurements described in paragraph (b)(6) of this section.

(9) Wastewater analysis shall be conducted in accordance with paragraph (b)(9)(i) or (b)(9)(ii) of this section.

(i) Use the equations in paragraphs (b)(9)(i) (A) and (B) of this section to determine the total HAP concentration of a wastewater stream.

(A) The following equation shall be used to calculate the HAP concentration of an individually speciated HAP.

$$C_i = \left(C_c * \frac{MW}{24.055} * \frac{P_i}{760} * \frac{293}{T_i} * t * L * 10^3 \right) / M_s$$

Where:

C_i=HAP concentration of the individually-speciated organic HAP in the wastewater, parts per million by weight.

C_C=concentration of the organic HAP (i) in the gas stream, parts per million by volume on a dry basis

M_S=mass of sample, milligrams

MW=molecular weight of the organic HAP (i), grams per gram-mole

24.055=ideal gas molar volume at 293° Kelvin and 760 millimeters of mercury, liters per gram-mole

P_i=barometric pressure at the time of sample analysis, millimeters mercury absolute

760=reference or standard pressure, millimeters mercury absolute

293=reference or standard temperature, °Kelvin

T_i=sample gas temperature at the time of sample analysis, °Kelvin

t=actual purge time minutes

L=actual purge rate liters per minute

10^3=conversion factor, milligrams per gram

(B) Total HAP concentration can be determined by summing the HAP concentrations of all individually speciated organic HAP in the wastewater.

$$C_{stream} = \sum_{i=1}^{n} C_i$$

Where:

C_{stream}=total HAP concentration of wastewater stream

n=number of individual organic HAP (i) in the wastewater stream

C_i=HAP concentration of individual HAP (i) calculated according to the procedures in paragraph (b)(7)(i)(A) of this section

(ii) Use a test method or results from a test method that measures HAP concentrations in the wastewater, and that has been validated according to section 5.1 or 5.3 of Method 301 of 40 CFR part 63 appendix A.

(iii) Use Methods 624, 625, 1624, 1625, and 8270, and the alternative validation procedures presented in § 63.144.

(c) *Compliance with storage tank provisions.* The owner or operator of an affected storage tank shall demonstrate compliance with §§ 63.1252(b)(2) and 63.1252(b)(3)(i) and (ii), as applicable, by fulfilling the requirements of either paragraph (c)(1) or (c)(2) or (c)(3) of this section.

(1) To demonstrate compliance with the percent reduction requirement of § 63.1252(b)(2) or § 63.1252(b)(3) (i) or (ii), the mass rate of total HAP (E_i, E_o) shall be computed.

(i) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

C_{ij}, C_{oj}=concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume

E_i, E_o=mass rate of total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour

M_{ij}, M_{oj}=molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole

Q_i, Q_o=flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute

K_2=constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20°C

(ii) The percent reduction in total HAP shall be calculated as follows: where:

$$R = \frac{E_i - E_o}{E_i}(100)$$

Where:

R=control efficiency of control device, percent

E_i=mass rate of total HAP at the inlet to the control device as calculated under paragraph (c)(1)(i) of this section, kilograms organic HAP per hour

E_o=mass rate of total HAP at the outlet of the control device, as calculated under paragraph (c)(1)(i) of this section, kilograms organic HAP per hour

(iii) A performance test is not required to be conducted if the control device used to comply with § 63.1252(b) (storage tank provisions) is also used to comply with § 63.1252(c) (process vent provisions), and compliance with § 63.1252(c) has been demonstrated in accordance with paragraph (d)(2) of this section.

(2) To demonstrate compliance with the percent reduction requirement of § 63.1252(b)(2) or § 63.1252(b)(3)(i) or (ii), a design evaluation shall be prepared. The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during reasonably expected maximum filling rate. This documentation is to include a description of the gas stream which enters the control device, including flow and organic HAP content under varying liquid level conditions, and the information specified in paragraphs (c)(2)(i) through (c)(2)(v) of this section, as applicable.

(i) If the control device receives vapors, gases or liquids, other than fuels, from emission points other than storage vessels subject to this subpart, the efficiency demonstration is to include consideration of all vapors, gases, and liquids, other than fuels, received by the control device.

(ii) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760°C is used to meet the emission reduction requirement specified in § 63.1252(b)(2)(i) (or (ii)), documentation that those conditions exist is sufficient to meet the requirements of paragraph (c)(2) of this section.

(iii) Except as provided in paragraph (c)(2)(ii) of this section, for thermal incinerators, the design evaluation shall include the autoignition temperature of the organic HAP, the flow rate of the organic HAP emission stream, the combustion temperature, and the residence time at the combustion temperature.

(iv) For carbon adsorbers, the design evaluation shall include the affinity of the organic HAP vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity of the feed gases, the temperature of the feed gases, the flow rate of the organic HAP emission stream, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, pressure drop shall be included.

(v) For condensers, the design evaluation shall include the final temperature of the organic HAP vapors, the type of condenser, and the design flow rate of the organic HAP emission stream.

(3) If the owner or operator of an affected source chooses to comply with the provisions of § 63.1252(b)(2) or § 63.1252(b)(3) by installing a floating roof, the owner or operator shall comply with the procedures described in 40 CFR 63.119(b), (c), (d), and 63.120.

(d) *Compliance with process vent provisions.* An owner or operator of an affected source complying with the process vent standards in § 63.1252(c) shall demonstrate compliance using the procedures described in paragraphs (d)(1) through (d)(4) of this section.

(1) Except as provided in paragraph (d)(4) of this section, compliance with the process vent standards in § 63.1252(c) shall be demonstrated using the procedures specified in paragraphs (d)(1)(i) through (v), as applicable.

(i) Compliance with § 63.1252(c)(2) is demonstrated when the controlled emissions of HAP from the sum of all process vents within a process that do not meet the criteria specified in § 63.1252(c)(4)(ii) is less than or equal to 2,000 pound per year. Controlled emissions of HAP shall be determined using the procedures described in paragraph (d)(3) of this section.

(ii) Compliance with § 63.1252(c)(3) is demonstrated when the annual uncontrolled HAP emissions from the sum of all process vents within a process that do not meet the criteria specified in § 63.1252(c)(4)(ii) is reduced by 93 percent. This demonstration shall be based on controlled emissions of HAP determined using the procedures described in paragraph (d)(3) of this section and uncontrolled emissions of HAP determined using the procedures described in paragraph (d)(2) of this section or by controlling the process vents using a device meeting the criteria specified in paragraph (d)(4) of this section.

(iii) Compliance with § 63.1252(c)(5) is demonstrated when the annual

uncontrolled HAP emissions from all process vents within a process is reduced by 98 percent, or when the sum of uncontrolled HAP emissions of all process vents within a process is less than or equal to 180 kg/yr (400 lb/yr). This demonstration shall be based on controlled emissions of HAP determined using the procedures described in paragraph (d)(3) of this section and uncontrolled emissions of HAP determined using the procedures described in paragraph (d)(2) of this section or by controlling the process vents using a device meeting the criteria specified in paragraph (d)(4) of this section.

(iv) Compliance with § 63.1252(c)(4) is demonstrated when the annual uncontrolled HAP emissions from each process vent meeting the requirements of § 63.1252(c)(4)(i) is reduced by 98 percent. This demonstration shall be based on controlled emissions of HAP determined using the procedures described in paragraph (d)(3) of this section and uncontrolled emissions of HAP determined using the procedures described in paragraph (d)(2) of this section or by controlling the process vents using a device meeting the criteria specified in paragraph (d)(4) of this section.

(v) Compliance with § 63.1252(c)(4)(ii) is demonstrated when the annual uncontrolled HAP emissions from each process vent meeting the requirements of § 63.1252(c)(4)(ii) is reduced by 93 percent. This demonstration shall be based on controlled emissions of HAP determined using the procedures described in paragraph (d)(3) of this section and uncontrolled emissions of HAP determined using the procedures described in paragraph (d)(2) of this section or by controlling the process vents using a device meeting the criteria specified in paragraph (d)(4) of this section.

(2) An owner or operator of an affected source complying with the emission limitation required by § 63.1252(c)(2), or emissions reductions specified in § 63.1252(c)(3), (c)(4), or (c)(5) of this subpart for each process vent within a process, shall calculate uncontrolled emissions according to the procedures described in paragraph (d)(2)(i) or (d)(2)(ii) of this section, as appropriate.

(i) Owners or operators shall determine uncontrolled emissions of HAP using measurements and/or calculations for each batch emission episode within each unit operation according to the engineering evaluation methodology in paragraphs (d)(2)(i)(A) through (d)(2)(i)(E) of this section. Individual HAP partial pressures in multicomponent systems shall be determined by the following methods: If the components are miscible in one another, use Raoult's law to calculate the partial pressures; if the solution is a dilute aqueous mixture, use Henry's law to calculate partial pressures; if Raoult's law or Henry's law are not appropriate or available, use experimentally obtained activity coefficients or models such as the group-contribution models, to predict activity coefficients, or assume the components of the system behave independently and use the summation of all vapor pressures from the HAP as the total HAP partial pressure. Chemical property data can be obtained from standard reference texts.

(A) Emissions from vapor displacement due to transfer of material shall be calculated according to equation (1):

$$E = \frac{(y_i)(V)(P_T)(MW)}{(R)(T)} \qquad (1)$$

Where:

E = mass emission rate

y_i = saturated mole fraction of HAP in the vapor phase

V = volume of gas displaced from the vessel

R = ideal gas law constant

T = temperature of the vessel vapor space; absolute

P_T = pressure of the vessel vapor space

MW = molecular weight of the HAP

(B) Emissions from purging shall be calculated using equation (1), except that for purge flow rates greater than 100 standard cubic feet per minute (scfm), the mole fraction of HAP will be assumed to be 25 percent of the saturated value.

(C) Emissions caused by the heating of a vessel shall be calculated using the procedures in either paragraph (d)(2)(i)(C)(*1*), (C)(*2*), or (C)(*3*) of this section, as appropriate.

(*1*) If the final temperature to which the vessel contents is heated is lower than 50° K below the boiling point of the HAP in the vessel, then emissions shall be calculated using the equations (2) through (5) in paragraphs (d)(2)(i)(C)(*1*)(*i*) through (*iv*) of this section.

(*i*) The mass of HAP emitted per episode shall be calculated as follows:

$$E = \frac{\frac{\sum (P_i)_{T1}}{Pa_1} + \frac{\sum (P_i)_{T2}}{Pa_2}}{2} \times \Delta\eta \times MW_{HAP} \qquad (2)$$

Where:

E = mass of HAP vapor displaced from the vessel being heated

$(P_i)T_n$ = partial pressure of each HAP in the vessel headspace at initial (n=1) and final (n=2) temperature

Pa_1 = initial gas pressure in the vessel

Pa_2 = final gas pressure

MW_{HAP} = the average molecular weight of HAP present in the vessel

(*ii*) The moles of gas displaced is represented by:

$$\Delta\eta = \frac{V}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right] \qquad (3)$$

Where:

$\Delta\eta$ = number of lb-moles of gas displaced

V = volume of free space in the vessel

R = ideal gas law constant

Pa_1 = initial gas pressure in the vessel

Pa_2 = final gas pressure

T_1 = initial temperature of vessel

T_2 = final temperature of vessel

(*iii*) The initial and final pressure of the noncondensable gas in the vessel shall be calculated according to the following equation:

$$Pa_n = P_{atm} - \Sigma(P_i)T_n \qquad (4)$$

Where:

Pa_n = partial pressure of gas in the vessel headspace at initial (n=1) and final (n=2) temperature

P_{atm} = atmospheric pressure

$(P_i)T_n$ = partial pressure of each condensable volatile organic compound (including HAP) in the vessel headspace at the initial temperature (n=1) and final (n=2) temperature

(*iv*) The average molecular weight of HAP in the displaced gas shall be calculated as follows:

$$MW_{HAP} = \frac{\sum_{i=1}^{n} (\text{mass of HAP})_i}{\sum_{i=1}^{n} \frac{(\text{mass of HAP})_i}{(\text{HAP molecular weight})_i}} \qquad (5)$$

where n is the number of different HAP compounds in the emission stream.

(*2*) If the vessel contents are heated to a temperature greater than 50°K below the boiling point, then emissions from the heating of a vessel shall be calculated as the sum of the emissions calculated in accordance with paragraphs (d)(2)(i) (C)(*2*)(*i*) and (C)(*2*)(*ii*) of this section.

(*i*) For the interval from the initial temperature to the temperature 50°K below the boiling point, emissions shall be calculated using Equation 2, where T_2 is the temperature 50°K below the boiling point.

(*ii*) For the interval from the temperature 50°K below the boiling point to the final temperature, emissions shall be calculated as the summation of emissions for each 5°K increment, where the emission for each increment shall be calculated using Equation 2.

(*A*) If the final temperature of the heatup is lower than 5°K below the boiling point, the final temperature for the last increment shall be the final temperature of the heatup, even if the last increment is less than 5°K.

(*B*) If the final temperature of the heatup is higher than 5°K below the boiling point, the final temperature for the last increment shall be the temperature 5°K below the boiling point, even if the last increment is less than 5°K.

(*C*) If the vessel contents are heated to the boiling point and the vessel is not operating with a process condenser, the final temperature for the final increment shall be the temperature 5°K below the boiling point, even if the last increment is less than 5°K.

(*3*) If the vessel is operating with a process condenser, and the vessel contents are heated to the boiling point, the primary condenser is considered part of the process. Emissions shall be calculated as the sum of Equation 2, which calculates emissions due to heating the vessel contents to the temperature of the gas exiting the condenser, and Equation 1, which calculates emissions due to the displacement of the remaining saturated noncondensable gas in the vessel. The final temperature in Equation 2 shall be set equal to the exit gas temperature of the process condenser. In Equation 1, V shall be set equal to the free space volume, and T_2 shall be set equal to the condenser exit gas temperature.

(*D*) Emissions from depressurization shall be calculated using the procedures in paragraphs (d)(2)(i) (D)(*1*) through (D)(*5*) of this section.

(*1*) The moles of HAP vapor initially in the vessel are calculated using the ideal gas law as follows:

$$n_{HAP} = \frac{(Y_{HAP})(V)(P_1)}{RT} \qquad (6)$$

Where:

Y_{HAP} = mole fraction of HAP (the sum of the individual HAP fractions, ΣY_i)

V = free volume in the vessel being depressurized

P_1 = initial vessel pressure

R = gas constant

T = vessel temperature, absolute units

(*2*) The moles of noncondensable gas present initially in the vessel are calculated as follows:

$$n_1 = \frac{VP_{nc_1}}{RT} \qquad (7)$$

Where:

V = free volume in the vessel being depressurized

P_{nc1} = initial partial pressure of the noncondensable gas, $P_1 - \Sigma P_i$

R = gas law constant, K

T = temperature, absolute units

(*3*) The moles of noncondensable gas present at the end of depressurization are calculated as follows:

$$n_2 = \frac{VP_{NC_2}}{RT} \qquad (8)$$

Where:

V = free volume in the vessel being depressurized

P_{NC2} = Final partial pressure of the noncondensable gas, $P_2 - \Sigma P_i$

R = gas law constant

T = temperature, absolute

(*4*) The moles of HAP emitted during the depressurization are calculated by taking an approximation of the average ratio of moles of HAP to moles of noncondensable and multiplying by the total moles of noncondensables released during the depressurization, or:

$$\frac{\left(\frac{n_{HAP}}{n_1} + \frac{n_{HAP}}{n_2}\right)}{2}\left[n_2 - n_1\right] = n_{HAP} \qquad (9)$$

Where:

n_{HAP} = moles of HAP emitted

(*5*) The moles of HAP emitted can be converted to a mass rate using the following equation:

$$\frac{n_{HAP} * MW_{HAP}}{t} = Er_{HAP} \qquad (10)$$

Where:

Er_{voc} = emission rate of the HAP

MW_{voc} = molecular weight of the HAP

t = time of the depressurization

(E) Emissions from vacuum systems may be calculated if the air leakage rate is known or can be approximated, using the following equation:

$$E_r = MWs\frac{La}{29}\left(\frac{P_{system}}{P_{system} - P_i *} - 1\right) \qquad (11)$$

Where:

E_r = rate of HAP emission, in lb/hr

P_{system} = absolute pressure of receiving vessel or ejector outlet conditions, if there is no receiver

P_i* = vapor pressure of the HAP at the receiver temperature, in mmHg

La = total air leak rate in the system, lb/hr

29 = molecular weight of air, lb/lbmole

(ii) For emission episodes in which the owner or operator can demonstrate that the methods in paragraph (d)(2)(i) of this section are not appropriate according to paragraph (d)(2)(iii) of this section, owners and operators shall calculate uncontrolled emissions by conducting an engineering assessment which includes, but is not limited to, the following:

(A) Previous test results provided the tests are representative of current operating practices at the process unit.

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(C) Maximum flow rate, HAP emission rate, concentration, or other relevant parameter specified or implied within a permit limit applicable to the process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or

physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances based on process stoichiometry to estimate maximum organic HAP concentrations,

(*2*) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities,

(*3*) Estimation of HAP concentrations based on saturation conditions.

(E) All data, assumptions, and procedures used in the engineering assessment shall be documented in accordance with § 63.1255(b). Data or other information supporting a finding that the emissions estimation equations are inappropriate shall be reported in the Notification of Compliance Status.

(iii) The emissions estimation equations in paragraph (d)(2)(i) of this section shall be considered inappropriate for estimating emissions for a given batch emissions episode if one or more of the criteria in paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section are met.

(A) Previous test data are available that show a greater than 20 percent discrepancy between the test value and the estimated value.

(B) The owner or operator can demonstrate to the Administrator through any other means that the emissions estimation equations are not appropriate for a given batch emissions episode.

(3) Owners and operators shall determine controlled emissions using measurements and/or calculations for each process vent using the control efficiency calculated from each device that controls process vents with total emissions of less than 10 tons per year, before control, according to the design evaluation described in paragraph (d)(3)(i) of this section, or using the emission estimation equations described in paragraph (d)(2) of this section, as appropriate. Owners and operators shall determine controlled emissions for each process vent using the control efficiency determined from each device that controls process vents with total emissions of greater than 10 tons per year, before control, by conducting a performance test on the control device as described in paragraphs (d)(3)(ii) through (iv) of this section, or by using the results of a previous performance test as described in paragraph (d)(5) of this section. Owners and operators are not required to conduct performance tests for devices described in paragraphs (d)(4) and (d)(5) of this section that control total emissions of greater than 10 tons per year, before control.

(i) The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during the emission episodes in which it is functioning in reducing emissions. This documentation is to include a description of the gas stream which enters the control device, including flow and HAP concentration, and the information specified in paragraphs (c)(2)(i) through (c)(2)(v) of this section, as applicable.

(ii) The performance test shall be conducted by performing emission testing on the inlet and outlet of the control device following the test methods and procedures of § 63.1253(b). Concentrations shall be calculated from the data obtained through emission testing according to the following procedures:

(A) The total HAP concentration (C_{HAP}) is the sum of the concentrations of the individual HAP and shall be computed for each run using the following equation:

$$C_{HAP} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{HAP} = concentration of total HAP, dry basis, parts per million by volume

C_{ji} = concentration of individual HAP j of sample i, dry basis, parts per million by volume

n = number of HAP in the sample

x = number of samples in the sample run

(B) The concentration of total HAP shall be corrected to 3 percent oxygen if a combustion device is the control device. The emission rate correction factor for excess air, based on the integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the oxygen concentration ($\%0_{2d}$). The samples shall be taken during the same time that the total HAP samples are taken. The concentration corrected to 3 percent oxygen (C_c) shall be computed as:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%0_{2d}}\right)$$

where:

C_c=concentration of organic HAP corrected to 3 percent oxygen, dry basis, parts per million by volume

C_m=concentration of organic HAP, dry basis, parts per million by volume

$\%0_{2d}$=concentration of oxygen, dry basis, percent by volume

(iii) Performance testing shall be conducted under the following conditions:

(A) For all control devices, the owner or operator shall test over absolute or hypothetical worst-case conditions, or over normal conditions, provided the operation of the devices is limited to the conditions that existed during testing. For testing during normal conditions, test conditions and their corresponding operating limits shall be established in the precompliance report and characterized according to stream composition, temperature, and flowrate. The owner or operator must demonstrate in the precompliance report that emission stream conditions entering the control device shall be within the test conditions at all times.

(B) For thermal incinerators, the owner or operator may also choose to test over representative worst-case conditions; however, if the owner or operator chooses to test over representative worst-case conditions, the maximum allowable vent stream flowrate into the thermal incinerator is restricted to the level for which it was designed. The design basis of the incinerator shall be included as part of the Notification of Compliance Status.

(iv) The owner or operator may elect to conduct more than one performance test on the control device for the purpose of establishing operating conditions associated with a range of achievable control efficiencies.

(4) An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (d)(4)(i) through (4)(iii) of this section is used to comply with the emission reductions required by § 63.1252(c)(4) or (c)(5) of this subpart.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(ii) A boiler or process heater where the vent stream is introduced with the primary fuel or is used as the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(5) An owner or operator is not required to conduct a performance test for the following:

(i) Any control device for which a previous performance test was conducted, provided the test was conducted using the same procedures

specified in § 63.1253(b) of this subpart over conditions typical of the appropriate worst-case, as defined in paragraph (d)(3)(iii)(A) of this section, or typical of normal operations, as defined in paragraph (d)(3)(iii)(A) of this section and restricted to the conditions described therein. The results of the previous performance test shall be used to demonstrate compliance.

(ii) A condenser system that is equipped with a temperature sensor and recorder, such that the condenser exit gas temperature can be measured at 15-minute intervals when the condenser is functionning in cooling a vent stream. The condenser exit gas temperature shall be used to calculate removal efficiency of the condenser in demonstrating compliance.

(e) Compliance with wastewater provisions.

(1) An owner or operator of a wastewater stream shall comply with paragraphs (e)(1)(i) through (1)(iii) of this section in determining streams that are exempt from the control requirements of § 63.1252(d).

(i) Compliance is demonstrated when the concentration of partially soluble HAP is less than 1,300 ppmw at the POD, or the concentration of total HAP is less than 5,200 ppmw at the POD, as measured or estimated using one of the procedures described in paragraphs (e)(1)(i) (A) through (C) of this section.

(A) The concentration of partially soluble HAP, soluble HAP, or total HAP shall be measured using methods validated under the procedures described in paragraphs (b)(8)(ii) and (iii) of this section.

(B) The concentration of partially soluble HAP, soluble HAP, or total HAP shall be calculated based on knowledge of the process wastewater. The owner or operator shall provide sufficient information to document concentrations. Examples of information that could constitute such knowledge include material balances, records of chemical purchases, process stoichiometry, or previous test results provided the results are still representative of current operating practices at the process unit(s).

(C) The concentration of partially soluble HAP, soluble HAP, or total HAP shall be calculated based on bench scale or pilot-scale test data. The owner or operator shall provide sufficient information to demonstrate that the bench-scale or pilot-scale test concentration data are representative of actual HAP concentrations. The owner or operator shall also provide documentation describing the testing protocol, and the means by which sample variability and analytical variability were accounted for in the determination of HAP concentrations.

(ii) Compliance is demonstrated when the total HAP load calculated by summing the load from all POD's at a facility is less than 1 Mg/yr. The total wastewater load shall be calculated by converting the concentration of partially soluble HAP, soluble HAP, or total HAP, as appropriate from a concentration (ppmw), to a measure of the kg of HAP per liter of wastewater. The load shall be calculated by multiplying the kilograms of HAP per liter by the total liters of wastewater per year at the POD. The total liters of wastewater discharged per year shall be demonstrated through the records required by § 63.1255(b) of this subpart.

(iii) Compliance is demonstrated for each stream with a concentration exceeding 1,300 ppmw partially soluble HAP or 5,200 ppmw total HAP at the POD, but less than 10,000 ppmw total HAP at the POD, and the HAP load at the POD or the total HAP load calculated from summing the load from all POD's within a process is less than 1 Mg/yr. Concentrations may be measured or estimated using the procedures described in paragraphs (e)(1)(i)(A) through (C) of this section.

(2) Compliance with the control requirements of § 63.1252(d)(4) is demonstrated through the procedures outlined in §§ 63.145(b), 63.145(c), 63.145(d), 63.138(j) or 63.145(i) as appropriate.

(3) Compliance with the control device requirements for devices used to comply with the provisions in §§ 63.133 through 63.138 is demonstrated by compliance with the provisions of § 63.139(d).

(4) Compliance with the inspection requirements for vapor collection systems, closed vent systems, fixed roofs, covers, or enclosures is demonstrated by compliance with the provisions of § 63.148.

(5) Compliance with the inspection requirements for wastewater tanks, surface impoundments, containers, individual drain systems, and oil-water separators is demonstrated through the provisions of § 63.143.

(f) Pollution prevention alternative standard: The owner or operator shall demonstrate compliance with § 63.1252(h)(2) of this subpart using the procedures described in paragraph (f)(1) of this section. The owner or operator shall demonstrate compliance with § 63.1252(h)(3) of this subpart using the procedures described in paragraph (f)(2) of this section.

(1) Compliance is demonstrated when the annual kg/kg factor, calculated according to the procedure in paragraphs (f)(1)(i) and (iii) of this section, is reduced to a value equal to or less than 25 percent of the baseline factor calculated according to the procedure in paragraph (f)(1)(i) and (ii) of this section.

(i) The production-indexed HAP consumption factors shall be calculated by dividing annual consumption of total HAP by the annual production rate, per process. The production-indexed total VOC consumption factor shall be calculated by dividing annual consumption of total VOC by the annual production rate, per process.

(ii) The baseline factor is calculated from yearly production and consumption data for the first 12-month period of time for which data was available, to begin no earlier than January 1, 1987.

(iii) The annual factor is calculated on the following bases:

(A) For continuous processes, the annual factor shall be calculated every 30 days for the 12-month period preceding the 30th day (30-day rolling average).

(B) For batch processes, the annual factor shall be calculated every 10 batches for the 12-month period preceding the 10th batch (10-batch rolling average).

(2) Compliance is demonstrated when the requirements of paragraphs (f)(2)(i) through (iv) of this section are met.

(i) The annual kg/kg factor, calculated according to the procedure in paragraphs (f)(1)(i) and (f)(1)(iii) of this section, is reduced to a value equal to or less than 50 percent of the baseline factor calculated according to the procedure in paragraphs (f)(1)(i) and (f)(1)(ii) of this section.

(ii) The yearly reduction, in kg HAP/yr, associated with add-on controls that meet the criteria of §§ 63.1252(h)(3)(ii)(A) through (D), is equal to or greater than the mass of HAP calculated by the following equation:

$$[\text{kg / kg}]_b * .25 * [\text{kg produced}]_a = [\text{kg reduced}]_a$$

where:

$[kg/kg]_b$ = the baseline production-indexed consumption factor, in kg/kg

$[kg\ produced]_a$ = the annual production rate, in kg/yr

$[kg\ reduced]_a$ = the annual reduction required by add-on controls, in kg/yr

(iii) Demonstration that the criteria in §§ 63.1252(h)(3)(ii)(A) through (D) are met shall be accomplished through a description of the control device and of the material streams entering and exiting the control device.

(iv) The annual reduction achieved by the add-on control shall be quantified using the methods described in § 63.1253(d).

(g) Planned maintenance: The owner or operator shall demonstrate compliance with the requirements of § 63.1252(b), and (c) of this subpart by including in each Periodic Report required by § 63.1256 of this subpart the periods of planned routine maintenance specified by date and time (planned routine maintenance of a control device, during which the control device does not meet the specifications of § 63.1252 of this subpart, as applicable, shall not exceed 240 hours per year).

(h) Compliance with storage tank provisions by using emissions averaging: An owner or operator with two or more affected storage tanks may demonstrate compliance with § 63.1252(b)(2) and § 63.1252(b)(3)(i) and (ii), as applicable, by fulfilling the requirements of paragraphs (h)(1) through (4) or paragraphs (h)(1), (2), (5) and (6) of this section, as appropriate.

(1) The owner or operator shall develop and submit for approval an Implementation Plan containing all the information required in § 63.1255(f) of this subpart 18 months prior to the compliance date of the standard. The Administrator shall have 60 days to approve or disapprove the emissions averaging plan after which time the plan shall be considered approved.

(2) The annual mass rate of total organic HAP (E_{Ti}, E_{To}) shall be calculated for each storage tank included in the emissions average using the requirements specified in either paragraph (c)(1) or (c)(2) or (c)(3) of this section.

(3) The following equations shall be used to calculate total HAP emissions for those tanks subject to § 63.1252(b)(1)(i):

$$E_{Ti} = \sum_{j=1}^{n} E_{ij}$$

$$E_{To} = \sum_{j=1}^{n} E_{oj}$$

where:

E_{ij} = yearly mass rate of total organic HAP at the inlet of the control device for tank j

E_{oj} = yearly mass rate of total organic HAP at the outlet of the control device for tank j

E_{Ti} = total yearly uncontrolled emissions

E_{To} = total yearly controlled emissions

n = number of tanks included in the emissions average

(4) The overall percent reduction efficiency shall be calculated as follows:

$$R = \frac{E_{Ti} - D\,E_{To}}{E_{Ti}}(100\%)$$

where:

R = overall percent reduction efficiency.

D = discount factor = 1.1 for all controlled storage tanks.

(5) The following equations shall be used to calculate total HAP emissions for those tanks subject to § 63.1252(b)(1)(ii):

$$E_{Ti} = \sum_{j=1}^{n} E_{ij}$$

$$E_{To} = \sum_{j=1}^{n} E_{oj}$$

Where:

E_{ij} = yearly mass rate of total organic HAP at the inlet of the control device for tank j

E_{oj} = yearly mass rate of total organic HAP at the outlet of the control device for tank j

E_{Ti} = total yearly uncontrolled emissions

E_{To} = total yearly controlled emissions

n = number of tanks included in the emissions average

(6) The overall percent reduction efficiency shall be calculated as follows:

$$R = \frac{E_{Ti} - D\,E_{To}}{E_{Ti}}(100\%)$$

Where:

R = overall percent reduction efficiency

D = discount factor = 1.1 for all controlled storage tanks

(i) Compliance with process vent provisions by using emissions averaging:

An owner or operator with two or more affected processes complying with § 63.1252(c) by using emissions averaging shall demonstrate compliance with paragraphs (i)(1), (2) and (3) of this section.

(1) The owner or operator shall develop and submit for approval an Implementation Plan 18 months prior to the compliance date of the standard containing all the information required in § 63.1255(f) of this subpart. The Administrator shall have 60 days to approve or disapprove the emissions averaging plan. The plan shall be considered approved if the administrator either approves the plan in writing, or fails to disapprove the plan in writing. The 60 day period shall begin when the administrator receives the request. If the request is denied, the owner or operator must still be in compliance with the standard by the compliance date.

(2) Owners or operators shall calculate uncontrolled and controlled emissions of HAP by using the methods specified in paragraph (d)(2) or (d)(3) of this section for each process included in the emissions average.

(i) The following equations shall be used to calculate total HAP emissions:

$$E_{TU} = \sum_{i=1}^{n} E_{Ui}$$

$$E_{TC} = \sum_{i=1}^{n} E_{Ci}$$

Where:

E_{Ui} = yearly uncontrolled emissions from process i

E_{Ci} = yearly controlled emissions for process i

E_{TU} = total yearly uncontrolled emissions

E_{TC} = total yearly controlled emissions

n = number of processes included in the emissions average

(3) The overall percent reduction efficiency shall be calculated as follows:

$$R = \frac{E_{TU} - D\,E_{TC}}{E_{TU}}(100\%)$$

Where:

R = overall percent reduction efficiency

D = discount factor = 1.1 for all controlled emission points

§ 63.1254 Monitoring requirements.

(a) The owner or operator of any existing, new, or reconstructed affected source shall provide evidence of continued compliance with the standard. During the initial compliance demonstration, maximum or minimum operating parameters, as appropriate, shall be established for emission sources that will indicate the source is in compliance. Test data, calculations, or information from the evaluation of the

control device design shall be used to establish the operating parameter. If the operating parameter to be established is a maximum and if performance testing has been required, the value of the parameter shall be the average of the maximum values from each of the three test runs. If the operating parameter to be established is a minimum and if performance testing has been required, the value of the parameter shall be the average of the minimum values from each of the three test runs. Parameter values for process vents from batch operations shall be determined as specified in paragraph (b)(1) and (2) of this section. The owner or operator shall operate processes and control devices within these parameters to ensure continued compliance with the standard. Monitoring parameters are specified for continuous process vent control scenarios in paragraphs (a)(1) through (7) of this section.

(1) For all control devices that are used to control process vent streams totaling less than 1 ton/yr HAP emissions, before control, monitoring shall consist of a periodic verification that the device is operating properly. This verification shall include, but not be limited to, a periodic demonstration that the unit is working as designed. This demonstration shall be included in the precompliance report, to be submitted 12 months prior to the compliance date of the standard.

(2) For affected sources using water scrubbers that are used to control process vent streams totaling greater than 1 ton/yr HAP, before controls, the owner or operator shall establish a minimum scrubber water flow rate as a site-specific operating parameter which must be measured and recorded every 15 minutes. The affected source will be considered to be out of compliance if the scrubber water flow rate, averaged over the operating day, is below the minimum value established during the initial compliance demonstration.

(3) For affected sources using condensers that are used to control process vent streams totaling greater than 1 ton/yr, before controls, the owner or operator shall establish the maximum condenser outlet gas temperature as a site-specific operating parameter which must be measured and recorded every 15 minutes. The affected source will be considered to be out of compliance if the condenser outlet gas temperature, averaged over the operating day, is greater than the maximum value established during the initial compliance demonstration.

(4) For affected sources using carbon adsorbers that are used to control process vent streams totaling greater than 1 ton/yr, before controls, the owner or operator shall establish a maximum outlet HAP concentration as the site-specific operating parameter which must be measured and recorded every 15 minutes. The affected source will be considered to be out of compliance if the outlet HAP concentration, averaged over the operating day, is greater than the maximum value established during the initial compliance demonstration.

(5) For affected sources using flares that are used to control process vent streams totaling greater than 1 ton/yr, before controls, the presence of the pilot flame shall be monitored every 15 minutes. The affected source will be considered to be out of compliance upon loss of pilot flame.

(6) For each wastewater management unit, treatment process, or control device used to comply with §§ 63.138 and 63.139, the owner or operator shall comply with either paragraph (a)(6)(i) or (a)(6)(ii) of this section.

(i) The owner or operator shall monitor the parameters specified in Tables 11, 12, or 13 of subpart 63.

(ii) The owner or operator shall submit a request for approval to monitor alternative parameters according to the procedures specified in § 63.1256(a)(2)(i).

(7) For affected sources using combustion devices that are used to control process vents totaling greater than 1 ton/yr, before controls, the owner or operator shall monitor the temperature of the gases exiting the combustion chamber as the site-specific operating parameter which must be measured and recorded every 15 minutes. The affected sources will be considered to be out of compliance if the chamber temperature averaged over the operating day, is greater than the maximum value established during the initial compliance demonstration.

(b) The owner or operator of any existing, new, or reconstructed affected source that chooses to comply with the emission limit or emission reduction requirement for batch process vents and combined streams from process vents and storage tanks shall provide evidence of continued compliance with the standard. As part of the initial compliance demonstrations for batch process vents and storage tanks, test data, compliance calculations, or information from the control device design evaluation shall be used to establish a maximum or minimum level of a relevant operating parameter for each control device that the owner or operator selects to operate as part of achieving the required emission reduction or emission limitation. The owner or operator shall operate processes and control devices within these parameters to ensure continued compliance with the standard.

(1) For devices that are used to control batch process vent streams totaling less than 1 ton/yr HAP emissions, before control, monitoring shall consist of a periodic verification that the device is operating properly. This verification shall include, but not be limited to, a periodic demonstration that the unit is working as designed. This demonstration shall be included in the precompliance report, to be submitted 12 months prior to the compliance date of the standard.

(2) For batch process vents that are routed to a device that receives HAP in excess of 1 ton per year, before control, the level(s) shall be established in accordance with paragraphs (b)(2)(i) through (iv) of this section.

(i) If more than one batch emission episode or more than one portion of a batch emission episode has been selected to be controlled, a single level for the batch cycle(s) or process(es) shall be calculated from the initial compliance demonstration. The appropriate parameter shall be determined for the worst-case conditions, as determined in § 63.1253(b)(7)(ii) and (b)(7)(iii) selected to be controlled. The average parameter monitoring level for the cycle(s) or process(es) shall be based on the parameter value determined from the worst-case conditions.

(ii) Instead of establishing a single level for the batch cycle(s) or process(es), as described in paragraph (b)(2)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled.

(iii) For devices controlling at least 10 tons per year for which a performance test is required, the owner or operator may establish the parametric monitoring level(s) based on the performance test supplemented by engineering assessments and manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values. The rationale for the specific level for each parameter, including any data and calculations used to develop the level(s) and a description of why the level indicates proper operation of the control device shall be provided in the Precompliance report. The procedures specified in this section have not been approved by the Administrator and determination of the parametric monitoring level using these procedures is subject to review and approval by the Administrator.

(iv) For devices controlling at least 10 tons per year for which a performance test is conducted at routine conditions, the owner or operator shall establish the parametric monitoring level(s) at conditions of the test. The level(s) established shall be provided in the notification of compliance status report.

(3) If the sum of HAP emissions, before control, routed to the device is greater than 1 tons/yr, the appropriate parameter shall be monitored at 15-minute intervals for the entire period in which the control device is functioning in achieving required removals.

(4) Affected sources with condensers on process vents shall establish the maximum condenser outlet gas temperature as a site-specific operating parameter, which, except as provided in paragraph (b)(3) of this section, must be measured every 15 minutes or at least once for batch emission episodes less than 15 minutes in duration. The affected source will be considered to be out of compliance if the condenser outlet gas temperature, averaged over the operating day for each process is greater than the value established during the initial compliance demonstration.

(5) For affected sources using water scrubbers, the owner or operator shall establish a minimum scrubber water flow rate as a site-specific operating parameter which, except as provided in paragraph (b)(3) of this section, must be measured and recorded every 15 minutes, or at least once for batch emission episodes less than 15 minutes in duration. The affected source will be considered to be out of compliance if the scrubber water flow rate, averaged over the operating day for each process, is below the minimum flow rate established during the initial compliance demonstration.

(6) For affected sources using carbon adsorbers or having uncontrolled process vents, the owner or operator shall establish a maximum outlet HAP concentration as the site-specific operating parameter which, except as provided in paragraph (b)(3) of this section, must be measured and recorded every 15 minutes, or at least once for batch emission episodes of duration shorter than 15 minutes. The affected source will be considered to be out of compliance if the outlet HAP concentration, averaged over the operating day for each process, is greater than the value established during the initial compliance demonstration.

(7) For affected sources using flares, the presence of the pilot flame shall be monitored every 15 minutes, or at least once for batch emission episodes less than 15 minutes in duration. The affected source will be considered to be out of compliance upon loss of pilot flame.

(8) For affected sources using combustion devices, the temperature of the gases exiting the combustion chamber shall be monitored every 15 minutes, or at least once for episodes less than 15 minutes in duration. The affected source will be considered out of compliance if the combustion chamber temperature, averaged over the operating day for each process, is less than the value established during the initial compliance demonstration.

(c) An owner or operator may request approval to monitor parameters other than those required by paragraphs (a)(2) through (7) and paragraphs (b)(5) through (8) of this section. The request shall be submitted according to the procedures specified in § 63.8(f) of subpart A or included in the Precompliance report.

(d) Periods of time when monitoring measurements exceed the parameter values as well as periods of inadequate monitoring data do not constitute a violation if they occur during a startup, shutdown, or malfunction, and the facility follows its startup, shutdown, and malfunction plan.

(e) The owner or operator of any affected source complying with the requirements of appendix GGGA of this section shall meet the monitoring requirements described in the appendix.

(f) The owner or operator of any affected source that chooses to comply with the requirements of §§ 63.1252(h)(2) and (3) shall calculate rolling average values of kg HAP consumption per kg production and kg VOC consumption per kg production. The owner or operator will be considered out of compliance if either rolling average kg/kg factor exceeds the value established in § 63.1253(f)(1)(ii).

(g) Owners or operators of any affected source that chooses to comply with the requirements of § 63.1252(j) shall meet all monitoring requirements specified in § 63.1254 (a), (b), (c), and (d), as applicable, for all processes and storage tanks included in the emissions average.

§ 63.1255 Recordkeeping requirements.

(a) The owner or operator of any affected source shall keep records of daily values of equipment operating parameters specified to be monitored under § 63.1254, or specified by the Administrator. Records shall be kept in accordance with the requirements of applicable paragraphs of § 63.10 of subpart A of this part, as specified in the General Provisions applicability table of this subpart. The owner or operator shall keep records up-to-date and readily accessible.

(1) A daily (24-hour) average shall be calculated as the average of all values for a monitored parameter recorded during the operating day.

(2) The operating day shall be the period defined in the operating permit or the Notification of Compliance Status in § 63.9(h). It may be from midnight to midnight or another continuous 24-hour period.

(3) For every operating day in which the daily average value for an operating parameter is outside its established range, the owner or operator must keep records of each parameter value reading taken during the day on which the excursion occurred.

(4) For processes subject to § 63.1252(h), records shall be maintained of rolling average values of kg HAP/kg production and kg VOC/kg production.

(b) The owner or operator of any affected source that complies with the standards for process vents, storage tanks, and wastewater systems shall maintain up-to-date, readily accessible records of the following information to document that HAP emissions or HAP loadings (for wastewater) are below the limits specified in § 63.1252:

(1) The emissions per batch for each process.

(2) The wastewater concentrations per POD and process.

(3) The number of batches per year for each batch process.

(4) The operating hours per year for continuous processes.

(5) The number of tank turnovers per year.

(c) The owner or operator of any affected source implementing the leak detection and repair program specified in appendix A of this subpart, shall implement the recordkeeping requirements in appendix A to this subpart. All records shall be retained for a period of 5 years, in accordance with the requirements of 40 CFR 63.10(b)(1).

(d) For unit operations occurring more than once per day, exceedances of established parameter limits shall result in no more than one violation per operating day for each monitored item of equipment utilized in the unit operation.

(e) For certain items of monitored equipment used for more than one type of unit operation in the course of an operating day, exceedances shall result in no more than one violation per operating day, per item of monitored equipment, for each type of unit operation in which the item is in service.

(f) Owners or operators of any affected source that chooses to comply with the requirements of § 63.1252(j) shall maintain up-to-date records of the following information:

(1) An Implementation Plan which shall include in the plan, for all process vents and storage tanks included in each of the averages, the information listed in paragraphs (f)(1)(i) through (f)(1)(v) of this section.

(i) The identification of all process vents and storage tanks in each emissions average.

(ii) The uncontrolled and controlled emissions of HAP and the overall percent reduction efficiency as determined in §§ 63.1253(h) (1) through (6) or §§ 63.1253(i) (1) through (3) as applicable.

(iii) The calculations used to obtain the uncontrolled and controlled HAP emissions and the overall percent reduction efficiency.

(iv) The estimated values for all parameters required to be monitored under § 63.1254(g) for each process and storage tank included in an average. These parameter values, or as appropriate, limited ranges for parameter values, shall be specified as enforceable operating conditions for the operation of the process or storage tank. Changes to the parameters must be reported as required by § 63.1256(d).

(v) A statement that the compliance demonstration, monitoring, inspection, recordkeeping and reporting provisions in §§ 63.1253(h) and (i), § 63.1254(g), and § 63.1256(d) that are applicable to each emission point in the emissions average will be implemented beginning on the date of compliance.

(2) The Implementation Plan must demonstrate that the emissions from the processes and storage tanks proposed to be included in the average will not result in greater hazard or, at the option of the operating permit authority, greater risk to human health or the environment than if the processes and storage tanks were controlled according to the provisions in § 63.1252(b) or (c).

(i) This demonstration of hazard or risk equivalency shall be made to the satisfaction of the operating permit authority.

(*A*) The Administrator may require owners and operators to use specific methodologies and procedures for making a hazard or risk determination.

(*B*) The demonstration and approval of hazard or risk equivalency shall be made according to any guidance that the Administrator makes available for use or any other technically sound information or methods.

(ii) An emissions averaging plan that does not demonstrate hazard or risk equivalency to the satisfaction of the Administrator shall not be approved. The Administrator may require such adjustments to the emissions averaging plan as are necessary in order to ensure that the average will not result in greater hazard or risk to human health or the environment than would result if the emission points were controlled according to § 63.1252 (b) or (c).

(iii) A hazard or risk equivalency demonstration must:

(*A*) Be a quantitative, comparative chemical hazard or risk assessment;

(*B*) Account for differences between averaging and non-averaging options in chemical hazard or risk to human health or the environment; and

(*C*) Meet any requirements set by the Administrator for such demonstrations.

(3) Records as specified in paragraphs (a), (b) and (d) of this section.

(4) A calculation of the overall percent reduction efficiency as specified in § 63.1253(h) and (i) of this subpart for the last quarter and the prior four quarters.

§ 63.1256 Reporting requirements

(a) The owner or operator of any affected source that elects to comply with the emission limit or emission reduction requirements for process vents, storage tanks, and wastewater systems, shall comply with the reporting requirements of applicable paragraphs of 40 CFR 63.9 and 63.10, as specified in the General Provisions applicability table.

(1) The Notification of Compliance Status report required under § 63.9 shall be submitted within 150 days of the compliance date and shall include:

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify HAP emissions from applicable sources.

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, or calculations used to demonstrate compliance. For performance tests, results should include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the values of monitored parameters established during the initial compliance determinations, including data and calculations to support the levels established.

(2) The precompliance report shall be submitted 12 months prior to the compliance date of the standard. For new sources, the Precompliance report shall be submitted to the Administrator with the application for approval of construction or reconstruction. The Administrator shall have 60 days to approve or disapprove the plan. The plan shall be considered approved if the administrator either approves the plan in writing, or fails to disapprove the plan in writing. The 60 day period shall begin when the administrator receives the request. If the request is denied, the owner or operator must still be in compliance with the standard by the compliance date. The Precompliance report shall include:

(i) Requests for approval to use alternative monitoring parameters or requests to set monitoring parameters according to § 63.1254(b)(2)(iii).

(ii) Descriptions of how the control devices subject to §§ 63.1254(a)(1) and 63.1254(b)(1) will be checked to verify that they are operating as designed.

(iii) A description of test conditions and limits of operation for control devices tested under normal conditions, and the corresponding monitoring parameter values.

(b) The owner or operator shall also submit to the Administrator, as part of the quarterly excess emissions and continuous monitoring system performance report and summary report required by 40 CFR 63.10(e)(3), the following recorded information.

(1) Reports of monitoring data, including 15-minute monitoring values as well as daily average values of monitored parameters for all operating days when the average values were outside the ranges established in the Notification of Compliance Status or operating permit.

(2) Reports of the duration of periods when monitoring data is not collected for each excursion caused by insufficient monitoring data. An excursion means any of the two cases listed in paragraphs (b)(2)(i) or (b)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (a)(2)(i) or (a)(2)(ii) of this section, this is considered a single excursion for the control device.

(i) When the period of control device operation is 4 hours or greater in an operating day and monitoring data are insufficient to constitute a valid hour of data, as defined in paragraph (b)(2)(iii) of this section, for at least 75 percent of the operating hours.

(ii) When the period of control device operation is less than 4 hours in an operating day and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iii) Monitoring data are insufficient to constitute a valid hour of data, as

used in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour.

(3) Whenever a process change, as defined in 40 CFR 63.115(e), is made that causes the emission rate from a de minimis emission point to become a process vent with an emission rate of 1 pound per year or greater, or a change in any of the information submitted in the Notification of Compliance Report, the owner or operator shall submit a report within 180 calendar days after the process change. The report may be submitted as part of the next summary report required under 40 CFR 63.10(e)(3). The report shall include:

(i) A description of the process change.

(ii) The results of the recalculation of the emission rate.

(iii) Revisions to any of the information reported in the original Notification of compliance under § 63.1256(a)(1).

(iv) Information required by the Notification of compliance under § 63.1256(a)(1) for changes involving the addition of processes or equipment.

(c) The owner or operator of any affected source implementing the leak detection and repair program specified in subpart H of this part, shall implement the reporting requirements in 40 CFR 63.182. Copies of all reports shall be retained as records for a period of 5 years, in accordance with the requirements of 40 CFR 63.10(b)(1).

(d) Owners or operators of any affected source that chooses to comply with the requirements of § 63.1252(j) shall submit all information as specified in § 63.1255(f) for each process or storage tank included in the emissions average. The owner or operator shall also submit to the administrator all information as specified in paragraph (b) of this section for each process or storage tank included in the emissions average.

(1) The reports must also include the information listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this section:

(i) Any changes of the processes or storage tanks included in the average.

(ii) The calculation of the overall percent reduction efficiency for the reporting period.

(iii) Changes to the Implementation Plan which affect the calculation methodology of uncontrolled or controlled emissions or the hazard or risk equivalency determination.

(iv) Any changes to the parameters monitored according to § 63.1254(g).

(2) Every 4th quarter report shall include the results according to § 63.1255(f)(4) to demonstrate the emissions averaging provisions of §§ 63.1252(j), 63.1253(h) and (i), 63.1254(g), and 63.1255(f) are satisfied.

§ 63.1257 Delegation of authority [Reserved]

TABLE 1 TO SUBPART GGG.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

Reference to subpart A	Applies to subpart GGG	Comment
§ 63.1(a)(1)	Yes	Additional terms defined in § 63.1251.
§ 63.1(a)(2)	Yes	
§ 63.1(a)(3)	Yes	
§ 63.1(a)(4)	Yes	Subpart GGG specifies applicability of each paragraph in subpart A to subpart GGG.
§ 63.1(a)(5)	N/A	Reserved.
§ 63.1(a)(6)	Yes	
§ 63.1(a)(7)	Yes	
§ 63.1(a)(8)	No	Discusses State programs.
§ 63.1(a)(9)	N/A	Reserved.
§ 63.1(a)(10)	Yes	
§ 63.1(a)(11)	Yes	
§ 63.1(a)(12)–(14)	Yes	
§ 63.1(b)(1)	No	§ 63.1250 of subpart GGG specifies applicability.
§ 63.1(b)(2)	Yes	
§ 63.1(b)(3)	Yes	
§ 63.1(c)(1)	Yes	Subpart GGG specifies applicability of each paragraph in subpart A to sources subject to subpart GGG.
§ 63.1(c)(2)	No	Area sources are not subject to subpart GGG.
§ 63.1(c)(3)	N/A	Reserved.
§ 63.1(c)(4)	Yes	
§ 63.1(c)(5)	Yes	
§ 63.1(d)	N/A	Reserved.
§ 63.1(e)	Yes	
§ 63.2	Yes	Additional terms are defined in § 63.1251 of subpart GGG; when overlap between subparts A and GGG occurs, subpart GGG takes precedence.
§ 63.3	Yes	Other units used in subpart GGG are defined in that subpart.
§ 63.4(a)(1)–(3)	Yes	
§ 63.4(a)(4)	N/A	Reserved.
§ 63.4(a)(5)	Yes	
§ 63.4(b)	Yes	
§ 63.4(c)	Yes	
§ 63.5(a)	Yes	Except replace the terms ''source'' and ''stationary source'' in § 63.5(a)(1) of subpart A with ''affected source''.
§ 63.5(b)(1)	Yes	
§ 63.5(b)(2)	N/A	Reserved.
§ 63.5(b)(3)	Yes	
§ 63.5(b)(4)	Yes	
§ 63.5(b)(5)	Yes	
§ 63.5(b)(6)	Yes	
§ 63.5(c)	N/A	Reserved.
§ 63.5(d)(1)(i)	Yes	
§ 63.5(d)(1)(ii)	Yes	

TABLE 1 TO SUBPART GGG.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG—Continued

Reference to subpart A	Applies to subpart GGG	Comment
§ 63.5(d) (1)(iii)	Yes	
§ 63.5(d)(2)	Yes	
§ 63.5(d)(3)–(4)	Yes	
§ 63.5(e)	Yes	
§ 63.5(f)(1)	Yes	Except replace ''source'' in § 63.5(f)(1) of subpart A with ''affected source''.
§ 63.5(f)(2)	Yes	
§ 63.6(a)	Yes	
§ 63.6(b)(1)–(2)	No	Subpart GGG specifies compliance dates.
§ 63.6(b)(3)–(4)	Yes	
§ 63.6(b)(5)	Yes	
§ 63.6(b)(6)	N/A	Reserved.
§ 63.6(b)(7)	Yes	
§ 63.6(c)(1)–(2)	Yes	Except replace ''source'' in § 63.6(c)(1)–(2) of subpart A with ''affected source''.
§ 63.6(c)(3)–(4)	N/A	Reserved.
§ 63.6(c)(5)	Yes	
§ 63.6(d)	N/A	Reserved.
§ 63.6(e)	Yes	
§ 63.6(f)(1)	Yes	
§ 63.6(f)(2)(i)–(ii)	Yes	
§ 63.6(f)(2)(iii)	Yes	
§ 63.6(f)(2)(iv)	Yes	
§ 63.6(f)(3)	Yes	
§ 63.6(g)	Yes	An alternative standard has been proposed; however, affected sources will have the opportunity to demonstrate other alternatives to the Administrator.
§ 63.6(h)	No	Subpart GGG does not contain any opacity or visible emissions standards.
§ 63.6(i)(1)	Yes	
§ 63.6(i)(2)	Yes	Except replace ''source'' in § 63.6(2)(i) and (ii) of subpart A with ''affected source''.
§ 63.6(i)(3)	Yes	
§ 63.6(i)(4)(i)	Yes	
§ 63.6(i)(4)(ii)	Yes	
§ 63.6(i)(5)–(14)	Yes	
§ 63.6(i)(15)	N/A	Reserved.
§ 63.6(i)(16)	Yes	
§ 63.6(j)	Yes	
§ 63.7(a)(1)	Yes	Subpart GGG specifies required testing and compliance procedures.
§ 63.7(a)(2)(i)–(vi)	Yes	
§ 63.7(a)(2) (vii)–(viii)	N/A	Reserved.
§ 63.7(a)(2) (ix)	Yes	
§ 63.7(a)(3)	Yes	
§ 63.7(b)(1)	Yes	
§ 63.7(b)(2)	Yes	
§ 63.7(c)	Yes	
§ 63.7(d)	Yes	Except replace ''source'' in § 63.7(d) of subpart A with ''affected source''.
§ 63.7(e)(1)	Yes	Subpart GGG also contains test methods specific to pharmaceutical sources.
§ 63.7(e)(2)	Yes	
§ 63.7(e)(3)	Yes	Subpart GGG specifies test methods and procedures.
§ 63.7(f)	Yes	
§ 63.7(g)(1)	Yes	
§ 63.7(g)(2)	N/A	Reserved.
§ 63.7(g)(3)	Yes	
§ 63.7(h)(1)–(2)	Yes	
§ 63.7(h)(3)(i)	Yes	
§ 63.7(h)(3) (ii)–(iii)	Yes	
§ 63.7(h)(4)–(5)	Yes	
§ 63.8(a)(1)	Yes	
§ 63.8(a)(2)	Yes	
§ 63.8(a)(3)	N/A	Reserved.
§ 63.8(a)(4)	Yes	
§ 63.8(b)(1)	Yes	
§ 63.8(b)(2)	No	Subpart GGG has CMS requirements.
§ 63.8(b)(3)	Yes	
§ 63.8(c)(1)(i)	Yes	
§ 63.8(c) (1)(ii)	Yes	
§ 63.8(c) (1)(iii)	Yes	
§ 63.8(c)(2)–(3)	Yes	
§ 63.8(c)(4)–(8)	No	Subpart GGG specifies monitoring frequencies.
§ 63.8(d)	Yes	
§ 63.8(e)	Yes	
§ 63.8(f)(1)	Yes	
§ 63.8(f)(2)	Yes	
§ 63.8(f)(3)	Yes	

TABLE 1 TO SUBPART GGG.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG—Continued

Reference to subpart A	Applies to subpart GGG	Comment
§ 63.8(f)(4)	Yes	
§ 63.8(f)(5)	Yes	
§ 63.8(f)(6)	Yes	
§ 63.8(g)	Yes	
§ 63.9(a)	Yes	
§ 63.9(b)(1) (i)–(ii)	Yes	
§ 63.9(b) (1)(iii)	Yes	
§ 63.9(b)(2)	Yes	
§ 63.9(b)(3)	Yes	
§ 63.9(b)(4)	Yes	
§ 63.9(b)(5)	Yes	
§ 63.9(c)	Yes	
§ 63.9(d)	Yes	
§ 63.9(e)	No	
§ 63.9(f)	No	
§ 63.9(g)	No	
§ 63.9(h)(1)–(3)	Yes	
§ 63.9(h)(4)	N/A	Reserved.
§ 63.9(h)(5)–(6)	Yes	
§ 63.9(i)	Yes	
§ 63.9(j)	Yes	
§ 63.10(a)	Yes	
§ 63.10(b)(1)	Yes	
§ 63.10(b)(2)	No	Subpart GGG specifies recordkeeping requirements.
§ 63.10(b)(3)	Yes	
§ 63.10(c)(1)–(6)	Yes	
§ 63.10(c)(7)–(8)	Yes	
§ 63.10(c)(9)–(15)	Yes	
§ 63.10(d)(1)	Yes	Subpart GGG specifies performance test reporting requirements.
§ 63.10(d)(2)	Yes	Subpart GGG specifies performance test reporting requirements.
§ 63.10(d)(3)	No	
§ 63.10(d)(4)	Yes	
§ 63.10(d)(5)	Yes	
§ 63.10(e)(1)–(2)	Yes	
§ 63.10(e)(3)	Yes	
§ 63.10(e)(4)	Yes	
§ 63.10(f)	Yes	
§ 63.11–§ 63.15	Yes	

TABLE 2 TO SUBPART GGG.—PARTIALLY SOLUBLE HAP

Compound
1,1,1-Trichloroethane (methyl chloroform)
1,1,2,2-Tetrachloroethane
1,1,2-Trichloroethane
1,1-Dichloroethylene (vinylidene chloride)
1,2-Dibromoethane
1,2-Dichloroethane (ethylene dichloride)
1,2-Dichloropropane
1,3-Dichloropropene
2,4,5-Trichlorophenol
2-Butanone (mek)
2-Nitropropane
4-Methyl-2-pentanone (mibk)
Acetaldehyde
Acrolein
Acrylonitrile
Allyl chloride
Benzene
Benzyl chloride
Biphenyl
Bromoform (tribromomethane)
Bromomethane
Butadiene
Carbon disulfide
Chlorobenzene
Chloroethane (ethyl chloride)
Chloroform
Chloromethane

TABLE 2 TO SUBPART GGG.—PARTIALLY SOLUBLE HAP—Continued

Compound
Chloroprene
Cumene
Dichloroethyl ether
Dinitrophenol
Ethyl acrylate
Ethylbenzene
Ethylene oxide
Hexachlorobenzene
Hexachlorobutadiene
Hexachloroethane
Methyl methacrylate
Methyl-t-butyl ether
Methylene chloride
N,N-dimethylaniline
Naphthalene
Phosgene
Propionaldehyde
Propylene oxide
Styrene
Tetrachloroethene (perchloroethylene)
Tetrachloromethane (carbon tetrachloride)
Toluene
Trichlorobenzene (1,2,4-)
Trichloroethylene
Triethylamine
Trimethylpentane
Vinyl acetate
Vinyl chloride
Xylene (m)
Xylene (o)
Xylene (p)
N-hexane
P-dichlorobenzene

TABLE 3.—SOLUBLE HAP'S

Compound
1,1-Dimethylhydrazine
1,4-Dioxane
Acetonitrile
Acetophenone
Diethyl sulfate
Dimethyl sulfate
Dinitrotoluene
Epichlorohydrin
Ethylene glycol dimethyl ether
Ethylene glycol monobutyl ether acetate
Ethylene glycol monomethyl ether acetate
Isophorone
Methanol (methyl alcohol)
Nitrobenzene
Toluidene

Appendix A to Subpart GGG—Equipment Leaks

§ GGGA–1 General Equipment Leak Requirements

(a) The provisions of this appendix apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, control devices, and closed-vent systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of this subpart.

(b) After the compliance date for a process, equipment to which this subpart applies that are also subject to the provisions of:

(1) 40 CFR part 60 will be required to comply only with the provisions of this subpart.

(2) 40 CFR part 61 will be required to comply only with the provisions of this subpart.

(c) [Reserved]

(d) The provisions in § 63.1(a)(3) of subpart A of this part do not alter the provisions in paragraph (b) of this section.

(e) Lines and equipment not containing process fluids are not subject to the provisions of this appendix. Utilities, and other nonprocess lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not considered to be part of a process.

(f) The provisions of this appendix do not apply to bench-scale processes, regardless of whether the processes are located at the same plant site as a process subject to the provisions of this subpart.

(g) Each piece of equipment to which this appendix applies shall be identified such

that it can be distinguished readily from equipment that is not subject to this appendix. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, or by designation of process boundaries by some form of weatherproof identification. If changes are made to the affected source subject to the leak detection requirements, equipment identification for each type of component shall be updated, if needed, within 15 calendar days of the end of each monitoring period for that component.

(h) Equipment that is in vacuum service is excluded from the requirements of this appendix.

(i) Equipment that is in organic HAP service, but is in such service less than 300 hours per calendar year, is excluded from the requirements of this appendix if it is identified as required in § GGGA–8(j) of this appendix.

(j) When each leak is detected by visual, audible, or olfactory means, or by monitoring as described in 63.180 (b) or (c), the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(2) The identification on a valve or connector in light liquid or gas/vapor service may be removed after it has been monitored as specified in § GGGA–6(f)(3), § 63.174(e), and § 63.175(e)(7)(i)(D), and no leak has been detected during the follow-up monitoring.

(3) The identification on equipment, except on a valve or connector in light liquid or gas/vapor service, may be removed after it has been repaired.

§ GGGA–2 Definitions

Bench-scale batch process means a batch process (other than a research and development facility) that is capable of being located on a laboratory bench top. This bench-scale equipment will typically include reagent feed vessels, a small reactor and associated product separator, recovery and holding equipment. These processes are only capable of producing small quantities of product.

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented to the atmosphere except through a closed-vent system.

Closed-purge system means a system or combination of system and portable containers, to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

Connector means flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined as described in § GGGA–3(a)(7) and § GGGA–7(c).

Control device, for purposes of this appendix, means any equipment used for recovering or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, flares, boilers, and process heaters.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Duct work means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Equipment, for purposes of this appendix, means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and instrumentation system in organic hazardous air pollutant service; and any control devices or closed-vent systems required by this subpart.

First attempt at repair means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere.

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be present, in a line.

In gas/vapor service means that a piece of equipment in organic hazardous air pollutant service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in organic hazardous air pollutant service is not in gas/vapor service or in light liquid service.

In light liquid service means that a piece of equipment in organic hazardous air pollutant service contains a liquid that meets the following conditions:

1. The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20 °C;

2. The total concentration of the pure organic compounds constituents having a vapor pressure greater than 0.3 kilopascals at 20 °C is equal to or greater than 20 percent by weight of the total process stream; and

3. The fluid is a liquid at operating conditions.

(**Note:** Vapor pressures may be determined by the methods described in 40 CFR 60.485(e)(1).)

In liquid service means that a piece of equipment in organic hazardous air pollutant service is not in gas/vapor service.

In organic hazardous air pollutant or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP's as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kilopascals below ambient pressure.

In-situ sampling systems means nonextractive samplers or in-line samplers.

Initial startup means the first time a new or reconstructed source begins production. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startups (as defined in this section) of processes following malfunctions or process shutdowns.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller, and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 0.5 inches and connectors greater than nominally 0.75 inches associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquid dripping include puddling or new stains that are indicative of an existing evaporated drip.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process shutdown.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device. This release can be one release or a series of releases over a short time period due to a malfunction in the process.

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 psig or by a vacuum are not pressure relief devices.

Process shutdown means a work practice or operational procedure that stops production from a process or part of a process during which it is technically feasible to clear process material from a process or part of a process consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process or part of a process for less than 24 hours is not a process

shutdown. An unscheduled work practice or operational procedure that would stop production from a process or part of a process for a shorter period of time than would be required to clear the process or part of the process of materials and start up the process, and would result in greater emissions than delay of repair of leaking components until the next scheduled process shutdown, is not a process shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process shutdowns.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this appendix.

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Startup means the setting in operation of a piece of equipment or a control device that is subject to this subpart.

§ GGGA–3 References

(a) The owner or operator of a source subject to this appendix shall comply with the following sections of subpart H, except that references to § 63.160 and § 63.162 shall mean § GGGA–1 of this appendix; references to § 63.161 shall mean § GGGA–2 of this appendix; references to § 63.163 and § 63.173 shall mean § GGGA–4 of this appendix; references to § 63.167 shall mean § GGGA–5 of this appendix; references to § 63.168 shall mean § GGGA–6 of this appendix; references to § 63.170 shall be included in the requirements set forth in § 63.1252(c); references to § 63.171 shall mean § GGGA–3(a)(5) of this appendix; references to § 63.172 shall mean § GGGA–3(a)(6) of this appendix; references to § 63.181 shall mean § GGGA–8 of this appendix; and references to § 63.182 shall mean § GGGA–9 of this appendix. The term ''process unit'' as used in subpart H shall be considered to be defined the same as ''process'' for sources subject to this subpart GGG:

(1) § 63.164, Compressors;

(2) § 63.165, Pressure relief devices in gas/vapor service;

(3) § 63.166, Sampling connection systems;

(4) § 63.169, Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service;

(5) § 63.171, Delay of repair, except

Section 63.171(a) shall be changed to read: Delay of repair of equipment for which leaks have been detected is allowed if one of the following conditions exist:

(i) § 63.171(a)(1) is added to read: The repair is technically infeasible without a process shutdown. Repair of this equipment shall occur by the end of the next scheduled process shutdown.

(ii) § 63.171(a)(2) is added to read: The owner or operator determines that repair personnel would be exposed to an immediate danger if attempting to repair without a process shutdown. Repair of this equipment shall occur by the end of the next scheduled process shutdown.

(6) § 63.172, Closed-vent systems and control devices, for closed-vent systems used to comply with this subpart, and for control devices used to comply with this appendix only, except

(i) § 63.172(k) and (l) shall not apply. Instead, references to these paragraphs shall mean § GGGA–7.

(ii) Owners or operators may, instead of complying with the provisions of § 63.172(f), design a closed-vent system to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gage or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the associated control device is operating.

(7) § 63.174, Connectors, except

(i) § 63.174(f) and (g) shall not apply. Instead, references to these paragraphs shall mean § GGGA–7.

(ii) Days that the connector are not in organic HAP service shall not be considered part of the 3 month period in § 63.174(e).

(8) § 63.175, Quality improvement program for valves, except

(i) § 63.175(a) is changed to read: An owner or operator may elect to comply with one of the alternative quality improvement programs specified in paragraphs (d) and (e) of this section. The decision to use one of these alternative provisions to comply with the requirements of § 63.168(d)(1)(ii) of this subpart must be made during the second year of compliance for existing and new processes.

(ii) The ''start of Phase III'' shall mean the ''compliance date'' as specified in § 63.1250. The phrase ''of Phase III'' shall mean ''after the compliance date'' as specified in § 63.1250.

(9) § 63.176, Quality improvement program for pumps, except

(i) § 63.176(a) is changed to read: If, on a 1-year rolling average, the greater of either 10 percent of the pumps in a process (or affected source) or three pumps in a process (or affected source) leak, the owner or operator may elect to comply with the requirements of this section as specified. The decision to use this provision to comply with the requirements of § 63.163(d)(2) of this subpart must be made during the second year of compliance for existing and new processes.

(ii) § 63.176(a)(1) and (2), and (d)(8) shall not apply.

(10) § 63.177, Alternative means of emission limitation: General;

(11) § 63.178, Alternative means of emission limitation: Batch processes;

(12) § 63.179, Alternative means of emission limitation: Enclosed-vented process units;

(13) § 63.180, Test methods and procedures, except § 63.180(b)(4)(ii)(A–C) are replaced by (b)(4)(ii) that reads: A mixture of methane and air at concentration of approximately, but less than, 10,000 parts per million methane for agitators; 2,000 parts per million for pumps; and 500 parts per million for all other equipment, except as provided in paragraph (b)(4)(iii) of this section.

§ GGGA–4 Standards: Pumps in Light Liquid Service and Agitators in Gas/Vapor Service and in Light Liquid Service

(a) The provisions of this section apply to each pump that is in light organic HAP liquid service, and to each agitator in organic HAP gas/vapor service or in light organic HAP liquid service.

(b)(1) Each pump and agitator subject to this section shall be monitored quarterly to detect leaks by the method specified in § 63.180(b) of this subpart, except as provided in § 63.177, § GGGA–7, and paragraphs (e) through (i) of this section.

(2) The instrument reading, as determined by the method as specified in § 63.180(b), that defines a leak is:

(i) For agitators, an instrument reading of 10,000 parts per million or greater.

(ii) For pumps, an instrument reading of 2,000 parts per million or greater.

(3) Each pump and agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump or agitator seal. If there are indications of liquids dripping from the seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (c)(3) of this section or § GGGA–3(a)(5) of this appendix.

(2) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(i) Tightening of packing gland nuts.

(ii) Ensuring that the seal flush is operating at design pressure and temperature.

(d) For pumps:

(1) The owner or operator shall decide no later than the first monitoring period whether to calculate percent leaking pumps on a process basis or on an affected source-wide basis. Once the owner or operator has decided, all subsequent percent calculations shall be made on the same basis.

(2) If, calculated on a 1-year rolling average, the greater of either 10 percent of the pumps in a process or three pumps in a process leak, the owner or operator shall either:

(i) Monitor each pump once per month; or

(ii) Implement a quality improvement program for pumps that complies with the requirements of § 63.176 and monitor quarterly.

(3) The number of pumps at a process shall be the sum of all the pumps in organic HAP service, except that pumps found leaking in a continuous process within 1 quarter after startup of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by the following equation:

$$\%P_L=[(P_L-P_S)/(P_T-P_S)]\times 100$$

Where:

$\%P_L$=Percent leaking pumps

P_L=Number of pumps found leaking as determined through quarterly monitoring as required in paragraphs (b)(1) and (b)(2) of this section.

P_T=Total pumps in organic HAP service, including those meeting the criteria in paragraphs (e) and (f) of this section.

P_S=Number of pumps leaking within 1 quarter of startup during the current monitoring period.

(e) Each pump or agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraphs (a) through (d) of this section, provided the following requirements are met:

(1) Each dual mechanical seal system is:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump/agitator stuffing box pressure; or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § GGGA–3(a)(6); or

(iii) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(2) The barrier fluid is not in light liquid service.

(3) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump/agitator is checked by visual inspection each calendar week for indications of liquids dripping from the pump/agitator seal.

(i) If there are indications of liquids dripping from the pump/agitator seal at the time of the weekly inspection, the pump/agitator shall be monitored as specified in § 63.180(b) to determine if there is a leak of organic HAP in the barrier fluid.

(ii) If an instrument reading of 2,000 parts per million or greater is measured for pumps, or 10,000 parts per million or greater is measured for agitators, a leak is detected.

(5) Each sensor as described in paragraph (e)(3) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(6)(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both.

(ii) If indications of liquids dripping from the pump/agitator seal exceed the criteria established in paragraph (e)(6)(i) of this section, or if, based on the criteria established in paragraph (e)(6)(i) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(iii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § GGGA–3(a)(5) of this appendix.

(iv) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(f) Any pump/agitator that is designed with no externally actuated shaft penetrating the pump/agitator housing is exempt from the requirements of paragraphs (a) through (c) of this section.

(g) Any pump/agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals back to the process or to a control device that complies with the requirements of § GGGA–3(a)(6) is exempt from the requirements of paragraphs (b) through (e) of this section.

(h) Any pump/agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3) and (e)(4) of this section, and the daily requirements of paragraph (e)(5) of this section, provided that each pump/agitator is visually inspected as often as practicable and at least monthly.

(i) If more than 90 percent of the pumps at a process meet the criteria in either paragraph (e) or (f) of this section, the process is exempt from the requirements of paragraph (d) of this section.

§ GGGA–5 Standards: Open-Ended Valves or Lines

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.177 and paragraph (d) of this section.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance or repair. The cap, blind flange, plug, or second valve shall be in place within 1 hour of cessation of operations requiring process fluid flow through the open-ended valve or line, or within 1 hour of cessation of maintenance or repair.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

(d) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (a), (b) and (c) of this section.

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or, would prevent an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraph (a) through (c) of this section.

§ GGGA–6 Standards: Valves in Gas/Vapor Service and in Light Liquid Service

(a) The provisions of this section apply to valves that are either in gas organic HAP service or in light liquid organic HAP service.

(1) For existing and new affected sources, all valves subject to this section shall be monitored, except as provided in § 63.177 and § GGGA–7, by no later than 1 year after the compliance date.

(b) The owner or operator of a source subject to this appendix shall monitor all valves, except as provided in § 63.177 and § GGGA–7, at the intervals specified in paragraph (d) of this section and shall comply with all other provisions of this section, except as provided in § GGGA–3(a)(5), § 63.178, and § 63.179.

(1) The valves shall be monitored to detect leaks by the method specified in § 63.180(b).

(2) An instrument reading of 500 parts per million or greater defines a leak.

(c) [Reserved]

(d) After conducting the initial survey required in paragraph (a)(1) of this section, the owner or operator shall monitor valves for leaks at the intervals specified below:

(1) At processes with 2 percent or greater leaking valves, calculated according to paragraph (e) of this section, the owner or operator shall either:

(i) Monitor each valve once per month; or

(ii) Implement a quality improvement program for valves that complies with the requirements of § 63.175(d) or (e) and monitor quarterly.

(2) At processes with less than 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter, except as provided in paragraphs (d)(3) and (d)(4) of this section.

(3) At processes with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

(4) At processes with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(e)(1) Percent leaking valves at a process shall be determined by the following equation:

$$\%V_L=[V_L/(V_T+V_C)]\times 100$$

Where:

$\%V_L$=Percent leaking valves.

V_L=Number of valves found leaking excluding nonrepairables as provided in paragraph (e)(3)(i) of this section.

V_T=Total valves monitored, in a monitoring period excluding valves monitored as required by (f)(3) of this section.

V_C=Optional credit for removed valves=0.67×net number (i.e., total removed-total added) of valves in organic HAP service removed from process after the effective date for existing processes, and after the date of initial startup for new sources. If credits are not taken, then V_C=0.

(2) For use in determining monitoring frequency, as specified in paragraph (d) of this section, the percent leaking valves shall be calculated as a rolling average of two consecutive monitoring periods for monthly, quarterly, or semiannual monitoring programs; and as an average of any three out of four consecutive monitoring periods for annual monitoring programs.

(3)(i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to

comply with paragraph (e)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking calculation in a previous period) up to a maximum of 1 percent of the total number of valves in organic HAP service at a process may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in organic HAP service at a process, the number of nonrepairable valves exceeding 1 percent of the total number of valves in organic HAP service shall be included in the calculation of percent leaking valves.

(f)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § GGGA–3(a)(5) of this appendix.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(3) When a leak is repaired, the valve shall be monitored at least once within the first 3 months after its repair. Days that the valve are not in organic HAP service shall not be considered part of this 3-month period.

(g) First attempts at repair include, but are not limited to, the following practices where practicable:

(1) Tightening of bonnet bolts,

(2) Replacement of bonnet bolts,

(3) Tightening of packing gland nuts, and

(4) Injection of lubricant into lubricated packing.

(h) Any equipment located at a plant site with fewer than 250 valves in organic HAP service in the affected source is exempt from the requirements for monthly monitoring and a quality improvement program specified in paragraph (d)(1) of this section. Instead, the owner or operator shall monitor each valve in organic HAP service for leaks once each quarter, or comply with paragraphs (d)(3) or (d)(4) of this section.

§ GGGA–7 Unsafe To Monitor, Difficult To Monitor, and Inaccessible Equipment

(a) Equipment subject to this appendix shall not be required to comply with the monitoring requirements of this appendix if it meets the definition of difficult to monitor or unsafe to monitor as specified in paragraphs (b) or (c) of this section. Agitators and connectors will also be subject to the inaccessible to monitor requirements in paragraph (d) of this section. Specific paragraphs that will no longer apply to such equipment are as follows:

(1) For pumps and agitators, §§ GGGA–4 (b), (c), and (d) shall not apply.

(2) For valves, § GGGA–6 (b), (c), (d), (e), and (f) shall not apply.

(3) For closed-vent systems, § 63.172(f) (1) and (2), and (g) shall not apply.

(4) For connectors, § 63.174 (b), (c), (d), and (e) shall not apply.

(b) Equipment that is designated, as described in § GGGA–8(b)(7) of this appendix, as unsafe-to-monitor is subject to the exemptions of paragraph (a) of this section if:

(1) The owner or operator of the equipment determines that it is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with the paragraphs referenced in (a)(1) through (4) of this section.

(2) The owner or operator has a written plan that requires monitoring of the equipment as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable.

(c) Equipment that is designated, as described in § GGG–8(b)(7) of this appendix, as difficult to monitor is subject to the exemptions of paragraph (a) of this section if:

(1) The owner or operator of the equipment determines that the equipment cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface or it is not accessible at anytime in a safe manner;

(2) The process unit within which the equipment is located is an existing source or the owner or operator designates less than 3 percent of the total number of valves in a new source as difficult to monitor; and

(3) The owner or operator of the equipment follows a written plan that requires monitoring of the equipment at least once per calendar year.

(d) Agitators and connectors designated as inaccessible are subject to the exemptions of paragraph (a) of this section if:

(1) The equipment is inaccessible because it is:

(i) Buried;

(ii) Insulated in a manner that prevents access to the equipment by a monitor probe;

(iii) Obstructed by equipment or piping that prevents access to the equipment by a monitor probe;

(iv) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold which would allow access to equipment up to 7.6 meters (25 feet) above the ground;

(v) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(2) For pumps, agitators, and valves, the process within which the equipment is located is an existing source or the owner or operator designates less than 3 percent of the total number of components of that type (e.g., pumps, agitators, or valves) in a new source as inaccessible; and

(3) If any inaccessible equipment is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § GGGA–8 of this appendix.

§ GGGA–8 Recordkeeping Requirements

(a) An owner or operator of more than one process subject to the provisions of this appendix may comply with the recordkeeping requirements for these processes in one recordkeeping system if the system identifies with each record the program being implemented (e.g., quarterly monitoring, quality improvement) for each type of equipment. All records and information required by this section shall be maintained in a manner that can be readily accessed at the plant site. This could include physically locating the records at the plant site or accessing the records from a central location by computer at the plant site.

(b) Except as provided in paragraph (e) of this section and in paragraph GGGA–1(i), the following information pertaining to all equipment subject to the requirements in this appendix shall be recorded:

(1)(i) A list of identification numbers for equipment (except connectors exempt from monitoring and recordkeeping identified in § 63.174 and instrumentation systems) subject to the requirements of this appendix. Equipment need not be individually identified if all equipment in a designated area or length of pipe subject to the provisions of this appendix are identified as a group, and the number of components of each type of equipment (pumps, valves, etc.) subject is indicated. The list for each type of equipment shall be complete no later than the completion of the initial survey required for that component. The list of identification numbers shall be updated, if needed, to incorporate equipment changes within 15 calendar days of the completion of each monitoring survey for the type of equipment component monitored.

(ii) A schedule for monitoring connectors subject to the provisions of § 63.174(a) and valves subject to the provisions of § GGGA–6(d) of this appendix.

(iii) Physical tagging of the equipment to indicate that it is in organic HAP service is not required. Equipment subject to the provisions of this appendix may be identified on a plant site plan, in log entries, or by other appropriate methods.

(2)(i) A list of identification numbers for equipment that the owner or operator elects to equip with a closed-vent system and control device, under the provisions of § GGGA–4(g), § 63.164(h), or § 63.165(c).

(ii) A list of identification numbers for compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million above background, under the provisions of § 63.164(i).

(3)(i) A list of identification numbers for pressure relief devices subject to the provisions in § 63.165(a).

(ii) A list of identification numbers for pressure relief devices equipped with rupture disks, under the provisions of § 63.165(d).

(4) Identification of instrumentation systems subject to the provisions of this appendix. Individual components in an instrumentation system need not be identified.

(5) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup/shutdown/malfunction plan, required by § 63.6(e)(3), for the source or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(6) The following information shall be recorded for each dual mechanical seal system:

(i) Design criteria required in §§ GGGA–4(e)(6)(i) and 63.164(e)(2), and an explanation of the design criteria; and

(ii) Any changes to these criteria and the reasons for the changes.

(7) The following information pertaining to all equipment subject to the requirements of § GGGA–7, and all equipment subject to the requirements of § GGGA–3(a)(5)(iii) shall be recorded:

(i) Identification of equipment designated as unsafe to monitor, difficult to monitor, or inaccessible and the plan for monitoring or inspecting this equipment.

(8)(i) A list of valves removed from and added to the process, as described in § GGGA–6(e)(1) of this appendix, if the net credits for removed valves is expected to be used.

(ii) A list of connectors removed from and added to the process, as described in § 63.174(i)(1), and documentation of the integrity of the weld for any removed connectors, as required in § 63.174(j). This is not required unless the net credits for removed connectors is expected to be used.

(9) For batch processes that the owner or operator elects to monitor as provided under § 63.178(c), a list of equipment added to batch product processes since the last monitoring period required in §§ 63.178(c)(3)(ii) and (3)(iii). This list must be completed for each type of equipment within 15 calendar days of the completion of the each monitoring survey for the type of equipment monitored.

(c) For visual inspections of equipment subject to the provisions of this appendix (e.g., §§ GGGA–4(b)(3), GGGA–4(e)(4)(i)), the owner or operator shall document that the inspection was conducted and the date of the inspection. The owner or operator shall maintain records as specified in paragraph (d) of this section for leaking equipment identified in this inspection, except as provided in paragraph (e) of this section. These records shall be retained for 2 years.

(d) When each leak is detected as specified in §§ GGGA–4 and 63.164; §§ GGGA–6 and 63.169; and §§ 63.172 and 63.174 of this subpart, the following information shall be recorded and kept for 2 years:

(1) The instrument and the equipment identification number and the operator name, initials, or identification number.

(2) The date the leak was detected and the date of first attempt to repair the leak.

(3) The date of successful repair of the leak.

(4) If postrepair monitoring is required, maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(5) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked onsite before depletion and the reason for depletion.

(6) If repairs were delayed, dates of process shutdowns that occur while the equipment is unrepaired.

(7)(i) If the alternative in § 63.174(c)(1)(ii) is not in use for the monitoring period, identification, either by list, location (area or grouping), or tagging of connectors disturbed since the last monitoring period required in § 63.174(b), as described in § 63.174(c)(1).

(ii) The date and results of follow-up monitoring as required in § 63.174(c). If identification of disturbed connectors is made by location, then all connectors within the designated location shall be monitored.

(8) The date and results of the monitoring required in § 63.178(c)(3)(i) for equipment added to a batch process since the last monitoring period required in §§ 63.178(c)(3)(ii) and (c)(3)(iii). If no leaking equipment is found in this monitoring, the owner or operator shall record that the inspection was performed. Records of the actual monitoring results are not required.

(9) Copies of the periodic reports as specified in § GGGA–9(d) of this appendix, if records are not maintained on a computerized data base capable of generating summary reports from the records.

(e) The owner or operator of a batch product process who elects to pressure test the batch product process equipment train to demonstrate compliance with this appendix is exempt from the requirements of paragraphs (b), (c), (d), and (f) of this section. Instead, the owner or operator shall maintain records of the following information:

1(1) The identification of each product, or product code, produced during the calendar year. It is not necessary to identify individual items of equipment in a batch product process equipment train.

(2) Records demonstrating the proportion of the time during the calendar year the equipment is in use in a batch process that is subject to the provisions of this subpart. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit. These records are not required if the owner or operator does not adjust monitoring frequency by the time in use, as provided in § 63.178(c)(3)(iii).

(3) Physical tagging of the equipment to identify that it is in organic HAP service and subject to the provisions of this appendix is not required. Equipment in a batch product process subject to the provisions of this appendix may be identified on a plant site plan, in log entries, or by other appropriate methods.

(4) The dates of each pressure test required in § 63.178(b), the test pressure, and the pressure drop observed during the test.

(5) Records of any visible, audible, or olfactory evidence of fluid loss.

(6) When a batch product process equipment train does not pass two consecutive pressure tests, the following information shall be recorded in a log and kept for 2 years:

(i) The date of each pressure test and the date of each leak repair attempt.

(ii) Repair methods applied in each attempt to repair the leak.

(iii) The reason for the delay of repair.

(iv) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment.

(v) The date of successful repair.

(f) The dates and results of each compliance test required for compressors subject to the provisions in § 63.164(i) and the dates and results of the monitoring following a pressure release for each pressure relief device subject to the provisions in §§ 63.165(a) and (b). The results shall include:

(1) The background level measured during each compliance test.

(2) The maximum instrument reading measured at each piece of equipment during each compliance test.

(g) The owner or operator shall maintain records of the information specified in paragraphs (g)(1) through (g)(3) of this section for closed-vent systems and control devices subject to the provisions of § GGGA–3(a)(6). The records specified in paragraph (g)(1) of this section shall be retained for the life of the equipment. The records specified in paragraphs (g)(2) and (g)(3) of this section shall be retained for 2 years.

(1) The design specifications and performance demonstrations specified in paragraphs (g)(1)(i) through (g)(1)(iv) of this section.

(i) Detailed schematics, design specifications of the control device, and piping and instrumentation diagrams.

(ii) The dates and descriptions of any changes in the design specifications.

(iii) The flare design (i.e., steam-assisted, air assisted, or nonassisted) and the results of the compliance demonstration required by § 63.11(b) of subpart A of this part.

(iv) A description of the parameter or parameters monitored, as required in § GGGA–3(a)(6)(e), to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(2) Records of operation of closed-vent systems and control devices.

(i) Dates and durations when the closed-vent systems and control devices required in § GGGA–4 and §§ 63.164 through 63.166 are not operated as designed as indicated by the monitored parameters, including periods when a flare pilot light system does not have a flame.

(ii) Dates and durations during which the monitoring system or monitoring device is inoperative.

(iii) Dates and durations of startups and shutdowns of control devices required in § GGGA–4 and §§ 63.164 through 63.166.

(3) Records of inspections of closed-vent systems subject to the provisions of § 63.172.

(i) For each inspection conducted in accordance with the provisions of § 63.172(f)(1) or (f)(2) during which no leaks were detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(ii) For each inspection conducted in accordance with the provisions of § 63.172(f)(1) or (f)(2) during which leaks

were detected, the information specified in paragraph (d) of this section shall be recorded.

(h) Each owner or operator of equipment subject to the requirements of §§ 63.175 and 63.176 shall maintain the records specified in paragraphs (h)(1) through (h)(9) of this section for the period of the quality improvement program for the equipment.

(1) For owners or operators who elect to use a reasonable further progress quality improvement program, as specified in § 63.175(d):

(i) All data required in § 63.175(d)(2).

(ii) The percent leaking valves observed each quarter and the rolling average percent reduction observed in each quarter.

(iii) The beginning and ending dates while meeting the requirements of § 63.175(d).

(2) For owners or operators who elect to use a quality improvement program of technology review and improvement, as specified in § 63.175(e):

(i) All data required in § 63.175(e)(2).

(ii) The percent leaking valves observed each quarter.

(iii) Documentation of all inspections conducted under the requirements of § 63.175(e)(4), and any recommendations for design or specification changes to reduce leak frequency.

(iv) The beginning and ending dates while meeting the requirements of § 63.175(e).

(3) For owners or operators who elect to use the pump quality improvement program as specified in § 63.176:

(i) All data required in § 63.176(d)(2).

(ii) The rolling average percent leaking pumps.

(iii) Documentation of all inspections conducted under the requirements of § 63.176(d)(4), and any recommendations for design or specification changes to reduce leak frequency.

(iv) The beginning and ending dates while meeting the requirements of § 63.176(d).

(4) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(5) Records of all analyses required in §§ 63.175(e) and 63.176(d). The records will include the following:

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions and maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing valve or pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies, and documentation of the performance trial program items required under §§ 63.175(e)(6)(iii) and 63.176(d)(6)(iii).

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(6) All records documenting the quality assurance program for valves or pumps as specified in §§ 63.175(e)(7) and 63.176(d)(7).

(7) Records indicating that all valves or pumps replaced or modified during the period of the quality improvement program are in compliance with the quality assurance requirements in § 63.175(e)(7) and § 63.176(d)(7).

(8) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in § 63.176(d)(8).

(9) If exempted by § 63.175(e)(6)(v) or § 63.176(d)(6)(v), information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

(i) Information, data, and analysis used to determine that a piece of equipment or process is in heavy liquid service shall be recorded. Such a determination shall include an analysis or demonstration that the process fluids do not meet the criteria of ''in light liquid or gas service.'' Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(j) Identification, either by list, location (area or group) of equipment in organic HAP service less than 300 hours per year subject to the provisions of this appendix.

(k) Owners and operators choosing to comply with the requirements of § 63.179 shall maintain the following records:

(1) Identification of the process(es) and the organic HAP's they handle.

(2) A schematic of the process, enclosure, and closed-vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

§ GGGA–9 Reporting Requirements

(a) Each owner or operator of a source subject to this appendix shall submit the reports listed in paragraphs (a)(1) through (a)(5) of this section. Owners or operators requesting an extension of compliance shall also submit a report as described in § 63.6 of subpart A.

(1) An Initial Notification as described in § 63.9 of subpart A, and

(2) A Notification of Compliance Status described in paragraph (c) of this section,

(3) Periodic Reports described in paragraph (d) of this section, and

(4) [Reserved]

(5) [Reserved]

(b) Each owner or operator of a source subject to this appendix shall submit a Notification of Compliance Status within 90 days after the compliance dates specified in § 63.1250(e).

(1) The notification shall provide the information listed in paragraphs (b)(1)(i) through (b)(1)(iii) of this section for each process subject to the requirements of §§ GGGA–3 through GGGA–8 of this appendix.

(i) Process identification.

(ii) Approximate number of each equipment type (e.g., valves, pumps) in organic HAP service, excluding equipment in vacuum service.

(iii) Method of compliance with the standard (for example, ''monthly leak detection and repair'' or ''equipped with dual mechanical seals'').

(2) The notification shall provide the information listed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section for each process subject to the requirements of § 63.178(b).

(i) Batch products or product codes subject to the provisions of this appendix, and

(ii) Planned schedule for pressure testing when equipment is configured for production of products subject to the provisions of this appendix.

(3) The notification shall provide the information listed in paragraphs (b)(3)(i) and (b)(3)(ii) of this section for each process subject to the requirements in § 63.179.

(i) Process identification.

(ii) A description of the system used to create a negative pressure in the enclosure and the control device used to comply with the requirements of § GGGA–3(a)(6).

(4) Any change in the information submitted under this paragraph (b) shall be provided to the Administrator as a part of subsequent Periodic Reports. Section 63.9(j) shall not apply to the Notification of Compliance Status described in this paragraph (b).

(c) The owner or operator of a source subject to this appendix shall submit Periodic Reports.

(1) A report containing the information in paragraphs (c)(2), (c)(3), and (c)(4) of this section shall be submitted semiannually starting 6 months after the Notification of Compliance Status, as required in paragraph (b) of this section. The first periodic report shall cover the first 6 months after the compliance date specified in § 63.1250(e). Each subsequent periodic report shall cover the 6 month period following the preceding period.

(2) For equipment complying with the provisions of §§ GGGA–3 through GGGA–8 of this appendix, the summary information listed in paragraphs (i) through (xii) of this paragraph for each monitoring period during the 6-month period.

(i) The number of valves for which leaks were detected as described in § GGGA–6(b) of this appendix, the percent leakers, and the total number of valves monitored;

(ii) The number of valves for which leaks were not repaired as required in § GGGA–6(f) of this appendix, identifying the number of those that are determined nonrepairable;

(iii) The number of pumps and agitators for which leaks were detected as described in § GGGA–4(b) of this appendix, the percent leakers, and the total number of pumps and agitators monitored;

(iv) The number of pumps and agitators for which leaks were not repaired as required in § GGGA–4(c) of this appendix;

(v) The number of compressors for which leaks were detected as described in § 63.164(f);

(vi) The number of compressors for which leaks were not repaired as required in § 63.164(g);

(vii) The number of connectors for which leaks were detected as described in § 63.174(a), the percent of connectors leaking, and the total number of connectors monitored;

(viii) The number of connectors for which leaks were not repaired as required in § 63.174(d), identifying the number of those that are determined nonrepairable;

(ix) The facts that explain any delay of repairs and, where appropriate, why a process shutdown was technically infeasible.

(x) The results of all monitoring to show compliance with §§ 63.164(i), 63.165(a), and 63.172(f) conducted within the semiannual reporting period.

(xi) If applicable, the initiation of a monthly monitoring program under either §§ GGGA4–(d)(2)(i) or GGGA–6(d)(1)(i) of this appendix, or a quality improvement program under either § 63.175 or 63.176.

(xii) If applicable, notification of a change in connector monitoring alternatives as described in § 63.174(c)(1).

(3) For owners or operators electing to meet the requirements of § 63.178(b), the report shall include the information listed in paragraphs (i) through (v) of this paragraph for each process.

(i) Batch product process equipment train identification;

(ii) The number of pressure tests conducted;

(iii) The number of pressure tests where the equipment train failed either the retest or two consecutive pressure tests;

(iv) The facts that explain any delay of repairs; and

(v) The results of all monitoring to determine compliance with § 63.172(f) of this subpart.

(4) Any revisions to items reported in earlier Notification of Compliance Status, if the method of compliance has changed since the last report or any other changes to the information reported has occurred.

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Part III

Department of Housing and Urban Development

24 CFR Part 103

Revision of HUD's Fair Housing Complaint Processing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 103

[Docket No. FR–4031–F–02]

RIN 2529–AA79

Revision of HUD's Fair Housing Complaint Processing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: On August 8, 1996 (61 FR 41480), HUD published an interim rule amending its regulations governing fair housing complaint processing. Specifically, the rule removed a provision allowing a respondent to request a subpoena during a fair housing investigation. This rule finalizes the policies and procedures set forth in the August 8, 1996 interim rule and takes into consideration the public comments received on the interim rule. HUD has decided to adopt the interim rule without change.

EFFECTIVE DATE: May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Forward, Deputy Assistant Secretary for Enforcement and Investigations, Room 5106, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–4211. For hearing or speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the ''800'' number, these numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Interim Rule Finalized Without Change

The public comment period on the August 8, 1996 interim rule expired on October 7, 1996. Only ten public comments were received. HUD has decided not to make any changes as a result of public comment. Section III. of the preamble presents a summary of the significant issues raised by the public commenters on the interim rule, and HUD's responses to these comments.

II. The August 8, 1996 Interim Rule

The Fair Housing Amendments Act of 1988 (Pub. L. 100–430, 102 Stat. 1619) (1988 Act) amended section 811 of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 *et seq.*). Section 811, as amended, authorizes the Secretary of HUD to issue subpoenas and order discovery in aid of fair housing investigations and hearings. Prior to the 1988 Act, section 811(b) of the Fair Housing Act permitted a respondent to request the issuance of a subpoena during a fair housing investigation:

> Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself.

42 U.S.C. 3611(b) (1969).

The 1988 Act removed the above-quoted provision for the Fair Housing Act and granted the Secretary sole authority for conducting discovery during fair housing investigations. HUD's regulations at 24 CFR part 103 (Fair Housing Complaint Processing), however, included a provision which permitted a respondent to request a subpoena during an investigation. On August 8, 1996 (61 FR 41480), HUD published an interim rule amending § 103.215(b) to remove this provision. This rule finalizes the policies and procedures set forth in the August 8, 1996 interim rule and takes into consideration the public comments received on the interim rule. The August 8, 1996 interim rule provided additional details on the amendments to 24 CFR 103.215(b).

III. Discussion of Public Comments on the August 8, 1996 Interim Rule

Statutory Support for Subpoena Requests by Respondents

Comment. Four commenters believe that revised section 811 of the Fair Housing Act does not prohibit a respondent from requesting the issuance of a subpoena during a fair housing investigation. These commenters noted in support of this argument that section 811 refers to witness fees which are payable by a party requesting a subpoena.

These commenters also cited language from the House Judiciary Committee Report on the 1988 Act: ''The Committee intends that the Secretary will subpoena all relevant witnesses and that in most instances parties will not have to request subpoenas'' (House Report No. 100–711, 100th Cong., 2d Sess. 36 (1988)). The commenters believe that the language of the statute, as well as its legislative history, supports their contention that the Congress intended to permit parties to request subpoenas during both investigations and hearings under the Fair Housing Act.

HUD response. Section 811(a) of the Fair Housing Act states:

> The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this title. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

42 U.S.C. 3611 (1996).

As the commenters noted, section 811 does not prohibit the issuance of subpoenas to complainants or respondents during investigations; however, neither does it provide complainants or respondents the right to request subpoenas or conduct discovery during investigations. Section 811 grants to the Secretary the right to issue subpoenas and order discovery in the same manner as such subpoenas could be granted or discovery ordered by a United States district court. In granting this authority to the Secretary, the Congress authorized the issuance of subpoenas upon the request of a party to a hearing before an administrative law judge, as provided for in section 812(c) of the Fair Housing Act: ''At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 811'' (42 U.S.C. 3612(c) (1996)).

The language of the House Report relied upon by the commenters further supports HUD's interpretation of section 811. The sentence in the House Report immediately prior to the one cited by the commenters states: ''The Committee intends that subpoenas and discovery be available and ordered to the same extent as allowed in the U.S. district courts.''

Had the Congress intended to provide respondents with the right to request subpoenas during investigations, it could have retained the original text of section 811(b) of the Fair Housing Act, which expressly established such a right. The deletion of that provision by the 1988 Act indicates that the Congress did not intend to create such a right.

The statement from the House Committee Report, which sets forth the Committee's intent to make subpoenas and discovery available to the same extent as in Federal district court, the language of section 811, as amended in 1988 to eliminate the provisions allowing respondents to request subpoenas, and section 812, which authorizes parties to an administrative hearing to obtain the issuance of subpoenas, clearly indicate that the Congress intended that parties to a hearing before an administrative law judge under the Fair Housing Act have

the same rights to discovery that would be available were the action to be brought in Federal district court. By amending its regulations to restrict the issuance of subpoenas in support of discovery to the enforcement proceeding itself, HUD is complying with the expressed intent of the Congress.

Furthermore, to allow respondents to conduct and compel discovery during an investigation as well as during a hearing before an administrative law judge or a trial in Federal district court would, in effect, allow respondents ''double discovery'' during investigations and enforcement. HUD believes that formal judicial discovery is more properly limited to the judicial proceeding occurring after a Charge has been issued. HUD interprets the Fair Housing Act's delegation of judicial authority to provide for discovery by complainants and respondents during an enforcement hearing before an administrative law judge only.

Respondent's Ability To Prepare Defense

Comment. The preamble to the August 8, 1996 interim rule emphasized that the interim rule did not compromise a respondent's ability to conduct its own investigation of the facts and prepare its own defense. Four commenters disagreed with this point. These commenters believe that the interim rule would prevent a respondent from requesting that HUD obtain information which could lead to a Determination of No Reasonable Cause in that respondent's case. The commenters believe that it would be improper for respondents to have no opportunity to challenge the accuracy of the allegations underlying a complaint. One commenter complained that it would be unfair ''to allow one side, the complainant, to gather information through the use of [HUD's] investigative powers,'' without providing similar investigative means to the respondent.

HUD response. HUD has responsibility for conducting a fair and impartial investigation into the facts surrounding alleged violations of the Fair Housing Act. To that end, it will consider and evaluate all information received, from whatever source. If a respondent knows of information that will be of assistance to HUD in reaching its determination, the respondent should make that information known to the investigator. Similarly, should a respondent wish to challenge the accuracy of information possessed by HUD, it may present all information at its disposal to do so. This rule does not affect a respondent's ability to make HUD aware of information for its own investigative purposes or challenge information possessed by HUD, and it authorizes HUD to act on information provided by complainants and respondents in determining whether HUD should issue a subpoena.

Delays in HUD's Investigation Process

Comment. The preamble to the August 8, 1996 interim rule stated HUD was issuing this rule in part to eliminate delays in investigations which are associated with subpoena requests and streamline the investigative process. Two commenters disagreed that the interim rule would expedite HUD's investigation of fair housing complaints. One of these commenters referred to statistical data included in the report on the enforcement of the 1988 Amendments Act prepared by the United States Commission on Civil Rights (Report): [1]

> During fiscal year 1990, 64 percent of the complaints were closed *in more than* the target 100 days; in 1991 the figure *dropped* to 62 percent; in 1992, it *dropped* further to 40 percent; and in 1993, the last year reported, it *dropped* to 39 percent. Accordingly, over these years, while the respondent had the ability to request subpoenas, HUD's performance in closing cases was improved. Report at 41. (Emphasis in the original.)

The commenter wrote that the cited Report language demonstrated that there are other reasons for the delay in fair housing investigations.

Another commenter disagreed, stating that processing subpoena requests can delay the investigative process. This commenter acknowledged that it is in the interest of both complainants and respondents to avoid such delays.

HUD response. As the commenters recognized, HUD has made a serious effort to reduce the amount of time involved in investigations and to improve its own performance in expeditiously closing cases. In accordance with the President's initiative on regulatory reform, HUD has undertaken to streamline further its complaint processing procedures. In the past, subpoena processing has significantly affected case closing periods in only a limited number of cases; however, HUD believes that the public interest in reducing regulatory burdens is best served by eliminating obstacles to the prompt processing of complaints wherever those obstacles may be found. While there are other considerations that support amending this rule, such as fairness to both complainants and respondents, the proper role of HUD in investigations, and conforming Departmental practice to that of other agencies enforcing civil rights laws, HUD has also determined that this final rule will improve HUD's performance and reduce the overall burden of its regulations on respondents and complainants alike.

Appearance of Conflict of Interest

Comment. HUD promulgated this rule in part to prevent the appearance of a conflict between the Department's dual roles as investigator and as arbiter of discovery disputes between complainants and respondents. One commenter acknowledged that the current rule creates the improper appearance that the investigation is an adversarial process in which HUD and the complainant share the same interest. The commenter recognized that this is not the case and that HUD conducts each investigation to determine objectively whether the Fair Housing Act has been violated. For this reason, the commenter supported amending the rule to correct that improper appearance of partiality.

Five commenters expressed their doubt that the interim rule would prevent the appearance of such a conflict. These commenters believe that the rule, by not granting to respondents the right to request a subpoena during investigations, created the appearance that HUD was conducting investigations, not as an impartial arbiter, but as an advocate of the complainant. One commenter noted that many complaints are filed by ''testers'' funded by HUD through programs such as the Fair Housing Initiatives Program (FHIP). The commenter believes that in cases where HUD has played such an active role in generating the complaint, the impartiality of HUD's investigation would benefit from having the full participation of the respondent when inquiring into the testing procedures used.

HUD response. HUD provides funding under the FHIP program to state and local governments and public or private nonprofit organizations to conduct fair housing education, outreach, and enforcement activities throughout the country. (See 42 U.S.C. 3616 note.) Complaints submitted by organizations receiving such grants are investigated with the same impartial consideration as all other alleged Fair Housing Act violations.

Hindrance to Conciliation Efforts

Comment. Three commenters believe the interim rule would hinder HUD's efforts to conciliate fair housing

[1] United States Commission on Civil Rights, *The Fair Housing Amendments Act of 1988: The Enforcement Report* (1994).

complaints. These commenters noted that some fair housing complaints do not provide sufficient information regarding the substance of the particular alleged discriminatory behavior. The commenters wrote that most respondents would be hesitant to conciliate or settle a fair housing complaint before having the opportunity to investigate fully its underlying facts.

HUD response. This amendment in no way limits any person's ability to conduct an investigation of the facts surrounding any alleged violation of the Fair Housing Act. This rule only limits a respondent's ability to use HUD's authority to compel discovery during an investigation. Nothing prevents respondents from conducting their own investigations of the underlying facts and respondents may choose to delay conciliating complaints until their own investigations are completed. In the vast majority of complaints that have been conciliated, conciliation has been accomplished without respondents resorting to formal discovery measures or requesting subpoenas. This rule will not significantly affect the resolution of Fair Housing Act complaints through conciliation, which will continue to be an important tool for resolving complaints.

Respondent's Right to Conduct Discovery

Comment. Four of the commenters objected to the description of the interim rule as announced in its preamble. The commenters believe that HUD should have announced more clearly that the interim rule effectively eliminated all discovery rights of the respondent during the investigative stage, not merely the right to have a subpoena issued at its request.

HUD response. HUD intends this rule to conform its investigative process to the practice of other Federal agencies enforcing civil rights laws and to simplify and streamline the investigative process; therefore, this rule no longer provides that respondents may use HUD's resources to compel formal discovery during an investigation. However, it should be noted that both complainants and respondents retain the ability to conduct their own investigations of the facts surrounding any complaint. Only the use of formal compulsory discovery procedures during an administrative investigation has been eliminated by this rule. HUD has emphasized in this Preamble that the effect of this final rule is to end ''double discovery'' and limit a respondent's ability to request subpoenas or conduct discovery to hearings before administrative law judges or civil trials in Federal district court.

In deciding whether to amend the existing rule, HUD looked to the experience of other Federal agencies enforcing civil rights laws for guidance on this issue. A review of the relevant regulations of such other agencies, including the Equal Employment Opportunity Commission, the Department of Education, and the Department of Justice, revealed that none of them provide for such ''double discovery'' during both investigations and enforcement proceedings as was provided for in HUD's existing regulation. The Department believes that the experience of other Federal administrative agencies provides positive guidance for this decision to streamline and simplify the investigation process.

Department of Justice Memorandum

Comment. The preamble to the August 8, 1996 interim rule referred to a Department of Justice opinion to support the amendments made to § 103.215(b) (61 FR 41480).[2] Three commenters questioned HUD's reliance on this opinion. These commenters believe that the opinion was not directed to the issues contained in the interim rule, but rather was directed to the narrow question of whether an attorney-client relationship exists between Department of Justice attorneys and complainants under the Fair Housing Act. According to the commenters, the memorandum does not address the question of HUD's role in fair housing investigations, nor does it define the relationship between HUD and a complainant during the investigation stage of a fair housing proceeding.

HUD response. The commenters are correct in stating that the opinion did not reach the nature of HUD's relationship with a complainant during Fair Housing Act investigations. To the extent that the opinion supported HUD's interpretation of its role in the investigation as being neutral and impartial, it did so only by analogy. HUD relies on that opinion in support of this rule only to the extent that it states that even after a Charge of Discrimination has been issued and the government is prosecuting a case on the complainant's behalf, a government attorney's obligation is to enforce the law, *not* to advocate for either complainants or respondents. This is consistent with the current investigatory procedure of HUD and that of other agencies enforcing civil rights laws. HUD's duty in both investigations and enforcement proceedings is to enforce the law, not to advocate for either side, and its regulations must reflect that role.

HUD's Justification for Interim Rulemaking

Comment. Five of the commenters believe that HUD should have solicited public comment prior to issuing the August 8, 1996 rule for effect. These commenters questioned the justification for interim rulemaking provided by HUD in the preamble to the August 8, 1996 rule.

HUD response. HUD's regulations at 24 CFR part 10 (Rulemaking Policy and Procedures) authorize HUD to issue a rule for immediate effect if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). In this case, the public interest in reducing the burdens of HUD's regulations and expediting Fair Housing Act investigations has been served through promulgation of the interim rule.

HUD has not received any requests for subpoenas by respondents subsequent to the effective date of the August 8, 1996 interim rule. HUD carefully reviewed and considered all comments received on the interim rule. Accordingly, the interim rule has not impacted a respondent's ability to request a subpoena prior to HUD's consideration of the public comments and the publication of this final rule.

III. Findings and Certifications

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule streamlines HUD's regulations governing fair housing complaint processing (24 CFR part 103). Specifically, the final rule removes a provision which allows a respondent to request a subpoena during a fair housing investigation. The removal of this provision will eliminate the delays associated with subpoena requests and expedite the investigation process. The rule will also conform HUD's investigative practices with those of other Federal administrative agencies. The rule will have no adverse or

[2] Assistant Attorney General Walter Dellinger, memorandum to Deval L. Patrick, Assistant Attorney General for Civil Rights, *The Relationship Between Department Attorneys and Persons on Whose Behalf the United States Initiates Cases Under the Fair Housing Act* (January 20, 1995).

disproportionate economic impact on small businesses.

Environmental Impact. In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule is solely concerned with HUD's processing of complaints under the Fair Housing Act. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal government and State and local governments.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. The only amendments made by this final rule are to HUD's regulations governing fair housing complaint processing. This final rule streamlines these regulations by removing the provision which authorizes a respondent to request the issuance of a subpoena during an investigation. No significant change in existing HUD policies or programs would result from promulgation of this final rule, as those policies and programs relate to family concerns.

Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act. The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure of State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects in 24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, the interim rule published at 61 FR 41480, August 8, 1996, amending 24 CFR part 103 is adopted as final without change.

Dated: February 13, 1997.

Susan M. Forward,

Deputy Assistant Secretary for Enforcement and Investigations.

[FR Doc. 97–8212 Filed 4–1–97; 8:45 am]

BILLING CODE 4210–28–P

federal register

Wednesday
April 2, 1997

Part IV

Department of Housing and Urban Development

24 CFR Parts 50 and 55

Protection and Enhancement of Environmental Quality; Technical and Clarifying Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50 and 55

[Docket No. FR–2206–F–04]

Protection and Enhancement of Environmental Quality; Technical and Clarifying Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On September 27, 1996 (61 FR 50914), HUD published a final rule streamlining and updating 24 CFR part 50 in its entirety. Part 50 describes the procedures used by HUD to carry out its responsibilities under the National Environmental Policy Act of 1969 (NEPA), the NEPA-implementing regulations of the Council on Environmental Quality, and the other NEPA-related Federal environmental laws and authorities. This final rule makes several technical and clarifying amendments to § 50.19 of the September 27, 1996 rule. Section 50.19 lists those activities which are excluded from the compliance requirements of the various environmental authorities. Further, this rule also makes a correction to the preamble of the September 27, 1996 final rule. This rule also makes a necessary conforming amendment to 24 CFR part 55 (Floodplain Management).

EFFECTIVE DATE: May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Community Viability, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000. For telephone communication, contact Walter Prybyla, Deputy Director for Policy, Environmental Review Division at (202) 708–1201. Hearing or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service number at 1–800–877–8339. (With the exception of the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. The September 27, 1996 Final Rule

On September 27, 1996 (61 FR 50914), HUD published a final rule streamlining and updating 24 CFR part 50 in its entirety. Part 50 describes the procedures used by HUD to carry out its responsibilities under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347), the NEPA-implementing regulations of the Council on Environmental Quality, and the other NEPA-related Federal environmental laws and authorities (see § 50.4 of the September 27, 1996 final rule). The September 27, 1996 final rule became effective on October 28, 1996.

B. Technical and Clarifying Amendments to the September 27, 1996 Final Rule

Section 50.19 of the September 27, 1996 rule lists those activities and approvals of policy documents which are categorically excluded from the environmental assessment required by NEPA (except in extraordinary circumstances as described in § 50.20(b)) and are not subject to the compliance requirements of the related environmental laws and authorities cited at § 50.4. The final rule makes the following technical and clarifying changes to this section:

1. Refinancings Under HUD's Loan Guarantee Recovery Fund (LGRF) Program

Currently, § 50.19(b)(21) excludes the ''[r]efinancing of HUD-insured mortgages that will not allow new construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance.'' This provision is intended to apply solely to the refinancing of HUD-insured mortgages on existing properties. Since publication of the September 27, 1996 final rule, the issue of refinancings under HUD's Loan Guarantee Recovery Fund (LGRF) program (24 CFR part 573) has arisen for the first time. This final rule updates 24 CFR part 50 by adding a new § 50.19(b)(24) which categorically excludes HUD guarantees under the LGRF program of loans that refinance loans and mortgages where the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance. Compliance with §§ 50.4(b)(1), 50.4(c)(1), and 51.303(a)(3), however, is required. LGRF refinancings would be identical or similar to HUD refinancings of HUD-held mortgages on existing properties allowed under § 50.19(b)(21) and the proposed clarification does not constitute a substantive change to the current rule. HUD has determined that such refinancings do not involve physical development and should be categorically excluded from environmental assessment under NEPA and listed under § 50.19 as not subject to the compliance requirements of most of the related environmental laws and authorities. This determination is based on the fact that unlike HUD financing of proposed physical development for which a full environmental review and compliance with the related authorities is required, the refinancing of existing loans and mortgages would apply only to already-completed construction and would not alter physical conditions so as to trigger compliance with most environmental laws, since any physical change would have occurred prior to the application for a HUD loan guarantee. Only three of the environmental requirements listed in § 50.4 would apply to refinancing under the LGRF program. These requirements are flood insurance, protection of coastal barrier resources, and notification of airport hazards.

A conforming amendment to 24 CFR part 55 (Floodplain Management) is required as a result of the new categorical exclusion for LGRF refinancings. Part 55 covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD or from a grant recipient subject to 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities). Paragraph (b) of § 55.12 describes the inapplicability of 24 CFR part 55 to certain categories of proposed actions. This final rule adds a new paragraph (b)(4) to § 55.12 for HUD refinancings of loans and mortgages under the LGRF program.

2. Lender Insurance Program

Section 427 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, approved September 26, 1996; 110 Stat. 2874, 2928) (the Appropriations Act) amended title II of the National Housing Act (12 U.S.C. 1707 et seq.) to provide that the Secretary may delegate to Direct Endorsement (DE) mortgagees the authority to insure mortgages on one-to four-family properties. Section 50.19(b)(17) of the September 27, 1996 final rule provides that HUD's endorsement of one-to-four family mortgage insurance under the DE program is not subject to all of the individual compliance requirements of the Federal laws and authorities cited in § 50.4; compliance with §§ 50.4(b)(1), 50.4(c)(1), and 51.303(a)(3), however, is required. Since section 427 allows HUD to delegate the authority to insure mortgages to certain eligible DE mortgagees, this Lender Insurance process should be similarly excluded from certain requirements. Therefore, this final rule amends § 50.19(b)(17) to include the Lender Insurance program.

3. Tenant-based Rental Assistance

Currently, § 50.19(b)(11) provides that tenant-based rental assistance is categorically excluded from the assessment required by NEPA except in extraordinary circumstances (§ 50.20(b)), and is not subject to the related laws cited at § 50.4. Regarding the approval of policy documents for tenant-based rental assistance, HUD is adding a parenthetical to clarify that the term ''leasing'' as covered in § 50.19(c)(1) does not include tenant-based rental assistance. Paragraphs (b) and (c) of § 50.19 provide a list of activities and policy documents, respectively, which are categorically excluded from the environmental review requirements described elsewhere in part 50. The list of policy documents in § 50.19(c) was intended to be sufficiently broad to encompass any rules and notices proposed for publication in the **Federal Register** by HUD to establish the policies and procedures necessary for the implementation of a categorically excluded activity listed in § 50.19(b) on the condition that such rules and notices otherwise do not involve real property transfer, physical development or standards setting described in § 50.19(c)(1).

4. Other Miscellaneous Corrections and Clarifications to § 50.19

Currently, § 50.19(b)(4) categorically excludes economic development activity costs that are not associated with construction or expansion of existing operations. This final rule clarifies the scope of the exclusion by revising the imprecise phrase ''expansion of existing operations'' to refer specifically to ''physical expansion of existing facilities.'' Generally, economic development results in some kind of expansion. Where expansion occurs in ways other than expansion of the physical plant, such as expansion in sales volume or number of employees, HUD does not anticipate significant environmental impact or physical changes that would trigger environmental reviews under the related environmental laws and authorities.

A new paragraph (c)(5)(ii) is added to § 50.19 to clarify that proposed Notices of Funding Availability (NOFA) are categorically excluded where an existing regulation or guideline pertaining to the NOFA contains no environmental review provisions because the regulation or guideline concerns only activities listed in § 50.19(b).

The final rule revises § 50.19(c)(6) to refer specifically to the establishment and review of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance. This activity does not involve physical development or standards setting.

C. Corrected Preamble to the September 27, 1996 Final Rule

The preamble to the September 27, 1996 final rule included a list of HUD programs subject to the requirements of 24 CFR part 50 (61 FR 50915–50916). HUD wishes to make the following corrections to this list.

1. The HOPE VI Revitalization Program is added to the list of programs administered by the Office of Public and Indian Housing. This program will remain subject to part 50 and is not affected by the October 14, 1996 effective date for the transition to 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities) of activities under title I of the United States Housing Act of 1937.

2. The Nehemiah Housing Opportunity Grants Program (NHOP) is deleted from the list of programs administered by the Office of Housing. The Congress is no longer authorizing new grants under NHOP.

3. Research grants authorized under sections 1051–53 of the Lead-Based Paint Hazard Reduction Act of 1992 (LBPHRA) are added to the list of activities subject to 24 CFR part 50. The only lead-based paint grants that are statutorily permitted to be subject to 24 CFR part 58 procedures are the abatement or hazard reduction grants that are authorized under section 1011 of the LBPHRA or under the 1992 HUD appropriations act.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that in this case prior public procedure is unnecessary. This rule does not make any substantive amendments to the September 27, 1996 final rule. The rule clarifies that HUD's guarantees for the refinancing of a mortgage or loan under the LGRF program are categorically excluded. This amendment will benefit eligible program participants by facilitating their ability to secure a lower interest rate. This rule also clarifies that since the insurance of mortgages through the Direct Endorsement process is categorically excluded, the insurance of mortgages through the Lender Insurance process should be similarly excluded. The other amendments made by this final rule clarify the policies and procedures contained in the September 27, 1996 final rule.

III. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have no federalism implications, and that the policies are not subject to review under the Order. This rule is limited to clarifying HUD's implementation of its responsibilities for environmental review and decision making under the National Environmental Policy Act and other related Federal environmental laws and authorities.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This rule clarifies 24 CFR part 50, which sets forth HUD's regulations governing the protection and enhancement of environmental quality. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this

rule will not have a significant economic impact on a substantial number of small entities. This rule makes several technical and clarifying changes to the September 27, 1996 final rule. This final rule will have no adverse or disproportionate economic impact on small entities.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Catalog of Federal Domestic Assistance

The program numbers are 14.128–14.900.

List of Subjects

24 CFR Part 50

Environmental quality, Environmental protection, Environmental review policy and procedures, Environmental assessment, Environmental impact statement, Compliance record.

24 CFR Part 55

Floodplain management, Floodplains, Environmental protection.

Accordingly, 24 CFR parts 50 and 55 are amended as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

2. Section 50.19 is amended by:
a. Revising paragraph (a);
b. Adding a heading to paragraph (b);
c. Revising paragraph (b)(14);
d. Revising paragraph (b)(17);
e. Adding a new paragraph (b)(24); and
f. Revising paragraph (c), to read as follows:

§ 50.19 Categorical exclusions not subject to the Federal laws and authorities cited in § 50.4.

(a) *General*. The activities and related approvals of policy documents listed in paragraphs (b) and (c) of this section are not subject to the individual compliance requirements of the Federal laws and authorities cited in § 50.4, unless otherwise indicated below. These activities and approvals of policy documents are also categorically excluded from the EA required by NEPA except in extraordinary circumstances (§ 50.20(b)). HUD approval or implementation of these categories of activities and policy documents does not require environmental review, because they do not alter physical conditions in a manner or to an extent that would require review under NEPA or the other laws and authorities cited at § 50.4.

(b) *Activities*. (1) Environmental and other studies, resource identification and the development of plans and strategies.

* * * * *

(14) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or physical expansion of existing facilities; however, in the case of equipment purchase, compliance with § 50.4(b)(1) is required.

* * * * *

(17) HUD's endorsement of one-to-four family mortgage insurance under the Direct Endorsement program, the insurance of one-to-four family mortgages under the Lender Insurance program, and HUD's acceptance for insurance of loans under Title I of the National Housing Act; however, compliance with §§ 50.4 (b)(1) and (c)(1) and 51.303(a)(3) is required.

* * * * *

(24) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with §§ 50.4 (b)(1) and (c)(1) and 51.303(a) is required.

(c) *Approval of policy documents*. (1) Approval of rules and notices proposed for publication in the **Federal Register** or other policy documents that do not:

(i) Direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction; or

(ii) Establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy.

(2) Approval of policy documents that amend an existing document where the existing document as a whole would not fall within an exclusion in this paragraph (c) but the amendment by itself would do so;

(3) Approval of policy documents that set out fair housing or nondiscrimination standards or enforcement procedures or provide for assistance in promoting or enforcing fair housing or nondiscrimination;

(4) Approval of handbooks, notices and other documents that provide operating instructions and procedures in connection with activities under a **Federal Register** document that has previously been subject to a required environmental review.

(5) Approval of a Notice of Funding Availability (NOFA) that provides funding under, and does not alter any environmental requirements of, a regulation or program guideline that was previously published in the **Federal Register**, provided that

(i) The NOFA specifically refers to the environmental review provisions of the regulation or guideline; or

(ii) The regulation or guideline contains no environmental review provisions because it concerns only activities listed in paragraph (b) of this section.

(6) Statutorily required and/or discretionary establishment and review of interest rates, loan limits, building cost limits, prototype costs, fair market rent schedules, HUD-determined prevailing wage rates, income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, and similar rate and cost determinations and related external administrative or fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites.

PART 55—FLOODPLAIN MANAGEMENT

3. The authority citation for 24 CFR part 55 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

4. Section 55.12 is amended by revising paragraph (b)(3) and adding a new paragraph (b)(4) to read as follows:

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

* * * * *

(b) * * *

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties; and

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance.

* * * * *

Dated: March 4, 1997.

Andrew M. Cuomo,

Secretary.

[FR Doc. 97–8291 Filed 4–1–97; 8:45 am]

BILLING CODE 4210–32–P

federal register

Wednesday
April 2, 1997

Part V

Environmental Protection Agency

40 CFR Part 91

Control of Air Pollution; Amendment to Emission Requirements Applicable to New Gasoline Spark-Ignition Marine Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 91

[FRL–5805–7]

Control of Air Pollution; Amendment to Emission Requirements Applicable to New Gasoline Spark-Ignition Marine Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking amends the regulations applicable to new gasoline spark-ignition marine engines to address an oversight regarding the production line testing program in the final regulations published on October 4, 1996, (61 FR 52087). No air quality impact is expected from these amendments. This amendment will allow spark-ignition marine engine manufacturers to delay the implementation of the production line testing program until MY 1999 for outboard engines and until MY 2000 for personal watercraft engines.

DATES: This final rule takes effect on April 2, 1997.

ADDRESSES: For information or compliance assistance, manufacturers who must comply with this regulation may contact the Office of Mobile Sources, Engine Programs and Compliance Division, Engine Compliance Programs Group (6403J), 401 M Street S.W., Washington, D.C. 20460.

Materials relevant to this rulemaking are contained in Docket Number A–92–28 and may be reviewed at that location from 8:00 am until 5:30 pm Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: James Blubaugh, Office of Mobile Sources, Engine Programs and Compliance Division (6403J), 401 M Street S.W., Washington, D.C. 20460, 202–233–9244.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this action are those which manufacture spark-ignition marine engines. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of spark ignition marine engines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 91.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Obtaining Copies of the Regulatory Language

Electronic Copies of Rulemaking Documents: Electronic copies of the preamble and the regulatory text of this rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/).

Users can find Marine Engine information and documents through the following path once they have accessed the OMS Home Page: ''Marine Engines.'' Electronic copies of the preamble and the regulatory text of this rulemaking are also available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS). Users are able to access and download TTN BBS files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit). Voice help: 919–541–5384. Internet address: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00–12:00 Noon ET.

1. Technology Transfer Network Top Menu: GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
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IV. Statutory Authority and Background

A. Statutory Authority

Authority for the action in this notice is granted to EPA by sections 206, 208, 213, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7525, 7542, 7547, and 7601(a)).

B. Background

EPA promulgated final regulations applicable to gasoline spark-ignition marine engines (marine SI engines) on July 31, 1996 (61 FR 52087, October 4, 1996).

In the Supplemental Notice of Proposed Rulemaking for the marine SI rule (61 FR 4600, February 7, 1996), EPA proposed that the compliance date for the production line testing program be delayed one year. The program would become effective in model year 1999 for outboard engines and in model year 2000 for personal watercraft engines. This would allow marine SI engine manufacturers time to prepare their production facilities with all of the necessary equipment and resources to comply with the production line testing

requirements. Comments received from industry during the comment period indicated their support for such a delay, and there were no adverse comments regarding the delay. In the Summary and Analysis of Comments Document supporting the final rule, EPA stated that the production line testing program becomes effective in model year 1999 for outboard engines and in model year 2000 for personal watercraft engines. (Summary and Analysis of Comments, Emission Standards for New Gasoline Spark-Ignition Marine Engines, June 1996). Inadvertently, this decision was not reflected in the regulatory text.

V. Implementation Dates for the Production Line Testing Program

A. Discussion

Today's notice finalizes the provision, as intended by EPA, to implement the production line testing program in model year 1999 for outboard engines and in model year 2000 for personal watercraft engines.

As indicated above, in the Supplemental Notice of Proposed Rulemaking for the marine SI rule (61 FR 4600, February 7, 1996), EPA proposed that the requirements for the production line testing program become effective in model year 1999 for outboard engines and in model year 2000 for personal watercraft engines. Comments received from industry during the comment period indicated their support for such a delay. There were no adverse comments regarding the delay. Today's notice corrects an oversight and finalizes a provision, as proposed in the SNPRM, that implements the production line testing program in model year 1999 for outboard engines and in model year 2000 for personal watercraft engines.

B. Regulatory approach

The Agency is implementing the desired changes by amending the existing Manufacturer Production Line Testing Program applicability provision at 40 CFR 91.501. The amendment adds language regarding the applicable date of the manufacturer production line testing program.

VII. Final Action

The Clean Air Act and Administrative Procedure Act generally require EPA to provide prior notice and opportunity for public comment before issuing a final rule. 42 U.S.C. 7607(d), 5 U.S.C. 553 (b), (c). Rules are exempt from this requirement if EPA finds for good cause that notice and comment are unnecessary. 42 U.S.C. 7607(d)(1), 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for public comment on the amendment of the applicability date for the marine SI engine production line testing program is unnecessary. As discussed above, this notice corrects an oversight by the Agency in preparing the final regulations for marine SI engines. In 1995, the Agency proposed a delay in the implementation date of the production line testing program and offered an opportunity for comment on that proposal. A repetition of that notice and opportunity for public comment is unnecessary given that EPA is merely correcting an oversight in the preparation of the final regulations.

For the same reasons, EPA believes there is good cause for making the amendment contained in this notice effective immediately. See 5 U.S.C. 553(d).

VIII. Cost Effectiveness

This rulemaking alters an existing provision by allowing marine SI engine manufacturers to have greater flexibility in implementing the production line testing program. Therefore, because this rulemaking alters an existing provision, and that alteration provides regulatory relief, there are no additional costs to marine SI engine manufacturers associated with this specific final action.

The costs and emission reductions associated with the Marine SI rule were developed for the October 4, 1996, final rulemaking. The change being implemented today does not affect the costs and emission reductions published as part of that rulemaking, because the change implemented today was factored into the development of those costs and emission reductions.

IX. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the Marine SI final rulemaking (61 FR 52087, October 4, 1996).

C. Impact on Small Entities

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant adverse economic impact on a substantial number of small businesses. Instead, this rulemaking will provide regulatory relief to both large and small volume engine manufacturers by permitting greater flexibility in implementing the production line testing program.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 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).

E. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4, 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 in any one year. Under Section 205, EPA must select the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule and is

consistent with statutory requirements. Section 203 requires EPA to take certain steps before finalizing a rule that may significantly or uniquely affect small governments.

EPA has determined that the action finalized today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector, and does not significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 91

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: March 27, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, is amended as set forth below.

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK-IGNITION ENGINES

1. The authority citation for part 91 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

2. Section 91.501 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 91.501 Applicability.

(a) * * *

(1) This subpart F applies to marine spark-ignition outboard engines beginning with model year 1999.

(2) This subpart F applies to marine spark-ignition personal watercraft engines beginning with model year 2000.

* * * * *

[FR Doc. 97–8380 Filed 4–1–97; 8:45 am]

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This list sets out the CFR issuances for the January–April 1997 editions and projects the publication plans for the **July, 1997** quarter. A projected schedule that will include the **October, 1997** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1996–1997 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

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