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April 11, 1997

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25, 50, 54 and 95

RIN 3150–AF37

Access to and Protection of Classified Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to conform the requirements for the protection of and access to classified information to new national security policy documents. This final rule is necessary to ensure that classified information in the possession of NRC licensees and others under the NRC's regulatory requirements is protected in accordance with current national policies.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7403, Email DGK@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

On August 5, 1996 (61 FR 40555), the NRC published a proposed rule in the **Federal Register** to amend 10 CFR Parts 25 and 95 pertaining to the protection of Restricted Data and classified National Security Information at licensee, certificate holder and other facilities. The proposed amendments were intended to conform NRC regulations to new national requirements for the protection of and access to classified National Security Information that were revised by the issuance of the National Industrial Security Program Operating Manual (NISPOM), Executive Order (E.O.) 12958, ''Classified National Security Information,'' dated April 17, 1995, and E.O. 12968, ''Access to Classified Information,'' dated August 2, 1995. The requirements of 10 CFR Parts 25 and 95, and the sections of Parts 50 and 54 that contain requirements for access to Restricted Data, were substantially based on E.O. 12356, dated April 6, 1982, which was superseded by E.O. 12958 and supplemented by the NISPOM.

The final rule amends the provisions of 10 CFR Parts 25, 50, 54, and 95 that deal with requirements for access to and protection of classified information that have been changed or added by the NISPOM or the Executive Orders with the exception of those requirements related to personnel security clearance for access to Secret Restricted Data.

The proposed rule would have permitted, in §§ 25.15 and 95.35, access to most Secret Restricted Data, other than that defined as Critical Secret Restricted Data in the NISPOM and its supplement, with an ''L'' clearance based on a National Agency Check with Inquiries and Credit Check (NACIC). The Department of Energy (DOE) objected to this change in their formal comments on the proposed rule. DOE believes that, pending completion of the Joint DOE/DoD Nuclear Weapons Access Authorization Review Group determination of what constitutes the most sensitive Restricted Data, the subsequent review of all classification guidance to determine if the guidance contains this type of information, and the upgrading of this information to Top Secret, all personnel with access to Secret Restricted Data must have a ''Q'' clearance based on a Single Scope Background Investigation (SSBI). Given DOE's special statutory authorities in establishing controls for Restricted Data, their views deserve special consideration. However, because this requirement may exceed the requirements of applicable National Policy (i.e., the NISPOM), and result in additional costs to licensees and certificate holders, the NRC has decided to withdraw the changes to §§ 25.15 and 95.35 in this final rulemaking and to republish them separately for additional public comment. This will provide interested parties an equal opportunity to address the issues and provide supporting rationale for their recommendations and comments.

Other aspects of the proposed rule were generally acceptable to all commenters. Those changes included revised and added definitions such as Cognizant Security Agency, Classified National Security Information, Classified Information, Facility Security Clearance, Foreign Ownership, Control, or Influence as well as numerous amendments to reflect the fact that the NRC may permit another Cognizant Security Agency (DOE, DoD, or CIA) to assume some or all of the security oversight functions at an NRC facility under the requirements of 10 CFR Parts 25 and/or 95 when that agency also has a significant security interest at the facility (§§ 25.13, 25.17, 25.19, 25.21, 25.23, 25.25, 25.27, 25.29, 25.33, 95.17, 95.18, 95.19, 95.25, 95.27, 95.29, 95.31, 95.33, 95.37, 95.39, 95.43, 95.47, 95.49, 95.51, 95.53, 95.57 and 95.59). The final rule addresses the intent of E.O. 12829, ''National Industrial Security Program,'' to reduce wasteful and inefficient duplicative oversight of private facilities which have classified interests from more than one government agency.

The final rule also adopts new requirements in areas where the Executive Orders or the NISPOM, mandate specific requirements not included in the previous versions of the rules. These new requirements include:

Requiring that key management personnel have access authorizations as well as those employees with access to classified information (§§ 95.17 and 95.18);

Permitting reinstatement of an access authorization up to 24 months after termination instead of the previous 6 months(§ 25.29);

Permitting facility security officers to issue visit authorization letters directly rather than processing authorization requests through the NRC Division of Security (§ 25.35);

Requiring a finding that a facility is not under foreign ownership, control or influence (§§ 95.15 and 95.17);

Requiring facility security officers to have specific training related to their position (§ 95.33);

Permitting the use of reinforced steel filing cabinets with lockbars and key locks for classified information (provided appropriate supplemental protection is in place during non-working hours) (§ 95.25);

Changing the security classification markings to conform to E.O. 12958 (§ 95.37);

Reducing the accountability requirements for Secret documents (§ 95.41);

Defining procedures for challenging classification decisions that one believes to be in error (§ 95.37);

Allowing for additional methods of transmitting classified information (§ 95.39);

Changing 10 CFR Parts 50 and 54 to refer to current procedures in 10 CFR Parts 25 and/or 95 for access to classified information (§§ 50.37 and 54.17); and

Imposing fewer limitations on a facility's authority to reproduce classified information when operationally necessary (§ 95.43).

II. Comments on the Proposed Rule

The Commission received two letters commenting on the proposed rule, one from Georgia Power Company and one from the DOE. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC. Both comments support the rulemaking, but provide recommendations for clarifications and improvements. The Georgia Power Company recommends that the NRC:

(1) Provide a procedure for the designation of the Cognizant Security Agency (CSA) for a facility;

(2) Address the Commission's role in ensuring compliance with the rules of other CSA's;

(3) Reconcile Restricted Data requirements in 10 CFR Parts 50 and 54 of the Commission's regulations with the proposed changes to 10 CFR Parts 25 and 95; and,

(4) Define when a facility clearance from the Commission is required. The DOE recommends that the NRC:

(1) Use either ''access authorization'' throughout the rule or indicate that ''personnel security clearance'' is a synonym for ''access authorization;''

(2) Eliminate the use of the term ''Critical Secret Restricted Data'' and require all Secret Restricted Data to be protected at the level required by the February 1995 NISPOM Supplement;

(3) Clarify the definition of ''access authorization'' in § 25.5;

(4) Clarify the requirements for review of the SF–86 in § 25.17(e);

(5) Clarify the scope of information to be protected in § 95.3;

(6) Change the term ''survey'' to ''review'' in § 95.17(a)(2);

(7) Clarify the level of access authorization required for senior management in § 95.18;

(8) Raise the level of protection for Secret Restricted Data in § 95.25 to the requirements of the NISPOM Supplement;

(9) Eliminate the requirements in § 95.25(c)(2)(v) to change security container combinations once every 12 months which exceeds the NISPOM requirements;

(10) Require that documents indicating ''multiple sources'' as the basis for classification have those sources identified on the record copy of the document; and,

(11) Require that ''person'' not be referred to as able to possess a facility clearance in § 95.57.

Comments From Georgia Power

Comment: The commenter stated that ''* * * the proposed rule does not explain which of these agencies is the appropriate CSA in a given situation or for a given facility, or who makes that determination. Conceivably, more than one of the agencies could be the CSA.'' Georgia Power recommended that the final rule include a more precise definition of CSA or a procedure for designating a CSA in a given situation.

Response: The definition of a CSA in 10 CFR Parts 25 and 95 has been changed to reflect that the CSA is the agency that exercises primary authority for the protection of the classified information at the facility and is the agency with which the facility interacts in these matters. The NRC agreement with the DoD and DOE implementing the National Industrial Security Program clearly indicates that one agency, the one with the greater security interest as determined between the agencies, would serve as the CSA and would be the agent of the other for matters relating to the protection of classified information. The facility would normally deal directly with the CSA on all issues related to the protection of classified information at that facility and the CSA would inform the other agency of issues related to its security interest.

Comment: With respect to the issue of the Commission's role of ensuring compliance with the rules of other CSAs, the commenter's concern was ''* * * how the Commission will be notified regarding access authorizations requested from another agency. Does an NRC licensee have an obligation to notify the Commission if it applies to another CSA for an access authorization?''

Response: Section 25.17 has been revised to require a facility, with a CSA other than NRC, to advise the NRC when it submits an individual for an access authorization for access to NRC classified information. The NRC does not need to be notified when the facility submits access authorization requests for access to classified information of the other agency. In keeping with the comment that the process should be simple, the change merely requires a letter of request for access to NRC classified information. The NRC must be involved when access to NRC classified information is requested since the NRC must make the need-to-know determination. The NRC will handle any necessary coordination between itself and the CSA.

Comment: The commenter noted an apparent conflict between §§ 50.37 and 54.17(g) and other Commission regulations.

Response: The NRC has revised those paragraphs to resolve the conflict. The NRC has clarified that compliance with 10 CFR Parts 25 and/or 95 satisfies the requirements of §§ 50.37 and 54.17(g) as they relate to the protection of classified information.

Comment: The commenter indicated that § 95.15 was unclear on whether a facility clearance was required under certain circumstances for licensee activities at other facilities. Specifically, the commenter stated, ''As revised by the proposed rule, it is unclear whether 10 CFR 95.15 requires an NRC licensee to obtain a facility clearance from the Commission in order for employees of that licensee to 'use' or 'handle' classified information which is located at a completely different facility, including facilities subject to the oversight of another agency. For example, does 10 CFR 95.15 require a facility clearance from the Commission in order for employees of an NRC licensed facility to use or handle classified information which is maintained at a DOE facility? Conversely, does 10 CFR 95.15 require the NRC to clear the non-NRC licensed facility? Although it does not appear to be the Commission's intent to require a facility clearance in either situation, an affirmative statement in this regard would assist in the implementation of the rule.''

Response: Section 95.15 has been modified to clarify that an NRC facility clearance is only required for the use or possession of NRC classified information at the facility. A licensee or other facility whose personnel are cleared by another agency for access to that agency's information at another facility does not require a facility clearance under § 95.15, nor would NRC clear the other facility. However, it should be clear that if a licensee or other facility has a facility clearance for NRC classified information and they wish

another facility (e.g., one of their contractors) to have access to the NRC classified information at their (the contractor's) facility, that contractor would require an NRC facility clearance.

Comments From DOE

Comment: DOE had two comments relating to ''access authorization:''

(1) While ''access authorization'' was the commonly used term * * * ''The introduction to the proposed rule references 'personnel security clearance' and some of the language in the text contains variations, such as 'personnel access authorization'. A common term should be used throughout, or the fact that a personnel security clearance is a synonym for access authorization established.''

(2) The definition for ''access authorization'' is confusing, stating that it means an individual is eligible for ''security clearance for access to classified information.''

Response: The term ''personnel security clearance'' in the Supplementary section of the final rule, which is an explanatory section rather than a portion of the rule, has been changed to ''access authorization.'' The other changes have not been adopted since this is a recommendation for an editorial change and, in each case where the terms are used the meaning is clear. The definition of ''access authorization'' has been used within the NRC industrial security program since the early 1980's, including at sites with joint DOE security interests, and within the NRC internal program since the inception of the agency, without confusion. The only change to the definition in this rule is to include certificate holders within its scope.

Comment: The commenter noted that the proposed rule contains the term ''Critical Restricted Data.'' They state that this term has not been adopted by any agency and that the level of protection for Secret Restricted Data was not adequate. Specifically the commenter stated, ''The draft regulation uses the term 'Critical Secret Restricted Data.' This term has not be (sic) implemented by any agency. A review group was formed to review this issue and has decided not to use this term. Instead, information will be appropriately upgraded to Top Secret. It is strongly recommended that NRC not use the term ''Critical Secret Restricted Data'' in this regulation. Instead we suggest that all Secret Restricted Data continue to be protected at the NISPOM supplement level until the critical information has been upgraded to Top Secret.'' The commenter further states ''The storage requirements for Secret contained in this(sic) sections are not consistent with the storage requirements for Secret Restricted Data in the NISPOM supplement.''

Response: Because of DOE's statutory responsibilities for the protection of Restricted Data, the potential economic impact on licensees and certificate holders and possible discrepancies with the requirements of the NISPOM, NRC is withdrawing the changes to §§ 25.15 and 95.35 which deal with the level of clearance/type of background investigation required for access to Secret Restricted Data and will republish those changes separately for public comment. Additionally, although the term ''Critical Secret Restricted Data'' is defined in and the security requirements for it are specified in Chapter 9, ''Restricted Data,'' of the NISPOM Supplement, dated February 1995, the Supplement also indicates that a Joint DOE/DoD Nuclear Weapons Access Authorization Group is reviewing this issue and that there are ongoing efforts by the DOE and DoD to revise the requirements reflected in the Supplement. Because that group has decided not to use the term ''Critical Restricted Data,'' it has been removed from § 95.31(b) and a description of the information it was intended to protect has been substituted. However, because the level of physical protection required for Secret Restricted Data in the proposed rule is essentially the same as the requirements of the current, long standing Part 95, and those requirements appear to meet the requirements of the NISPOM, it is difficult for the NRC to justify increasing its physical security requirements for all Secret Restricted Data, at increased financial and administrative burden to licensees and certificate holders at this time. However, if new policies for Restricted Data are approved and issued the NRC, at that time, will consider revising its regulations to reflect the new policies.

Comment: The commenter questioned whether § 25.17(e) requires a licensee/contractor to review Part 2 of the SF–86.

Response: It is not the intent of this section that personnel at a licensee, certificate holder, or other facility review Part 2 of the SF–86, nor has it been NRC practice that this occur. The NRC's instructions for completing the SF–86 explicitly state that Part 2 of the SF–86 is to be placed in a sealed envelope by the individual completing the form and that the envelope is to be forwarded to the NRC unopened. Section 25.17(d)(1)(i) has been clarified to ensure that these requirements are clear.

Comment: The commenter is concerned that § 95.3 does not include Formerly Restricted Data.

Response: While Formerly Restricted Data (FRD), information related primarily to the military use of atomic weapons, is rare in the NRC program, the NRC agrees that its regulations should clearly address all forms of classified information. Section 95.3 has been revised accordingly.

Comment: The commenter is concerned that the term ''security survey'' is used in 10 CFR Part 95 instead of the NISPOM term ''security review.''

Response: The term ''survey'' in §§ 95.17(a)(2) and 95.59 has been changed to ''review.''

Comment: The commenter is concerned that § 95.18 is not sufficiently clear about the level of access authorizations required for senior management. Specifically, the commenter states, ''Senior management cannot be cleared to the ''level of the facility'' by NRC, as NRC can only grant ''Q'' and ''L'' access authorizations, and facilities are classified as Secret, Top Secret, etc. Perhaps senior management could be cleared to a level commensurate with that of the facility clearance.''

Response: Section 95.18 has been revised to reflect that senior management will be cleared to a level commensurate with that of the facility clearance.

Comment: The commenter is concerned that the requirement to change security container combinations once every 12 months exceeds the requirements of the NISPOM.

Response: Section 95,25(c)(2)(v) has been deleted, eliminating this requirement.

Comment: The commenter is concerned that documents classified from multiple sources will not have an adequate record of what those sources were. Specifically, the commenter states, ''Suggest a sentence be added to indicate that on a document marked 'multiple sources' that the multiple sources must be identified in the records copy of the document.''

Response: The suggested revision is already contained in § 95.37(c)(1)(iv).

Comment: The commenter is concerned about the use of the term ''person'' in association with a facility clearance and that the definition of facility clearance should be more detailed.

Response: It is clear from the definitions and the context that any possessor of a facility clearance is obligated to immediately report certain types of information. The definition

''facility (security) clearance'' is a verbatim extract from the NISPOM and the definition of ''person'' used in Part 95 is similarly defined throughout 10 CFR and has been used for many years without confusion as to its meaning.

III. The Final Rule

With the exception of the items addressed under ''Comments on the Proposed Rule'' and a slight change to the definition of ''Visit Authorization Letter'' in § 25.5, the final rule is the same as the proposed rule. The specific changes from the proposed rule are—

The proposed revisions to §§ 25.15 and 95.35 have been withdrawn;

The definition of ''CSA'' in 10 CFR Parts 25 and 95 has been revised to reflect that the CSA is the agency which exercises primary authority for the protection of the classified information at the facility and is the agency with which the facility interacts in these matters;

The definition of ''Visit Authorization Letter'' in § 25.5 has been revised to clarify that such a letter is only required for information specifically related to the license, certificate, or other NRC program at the facility;

Section 25.17 has been amended to require a facility, with a CSA other than NRC, to advise the NRC when it submits an individual for an access authorization for access to NRC classified information, but not when the facility submits access authorization requests for access to the classified information of the other agency;

Section 95.31(b) has been revised to delete the term ''Critical Secret Restricted Data'' and replace it with a generic description of the type of data it was intended to protect;

Section 25.17(d)(1)(i) has been modified to clarify that facility security personnel are not to review Part 2 of the SF–86;

Sections 50.37 and 54.17(g) have been amended to clarify that compliance with 10 CFR Parts 25 and/or 95 satisfies the requirements of 10 CFR Parts 50 and 54;

Section 95.3 has been modified to include Formerly Restricted Data within its scope;

Section 95.15 has been modified to clarify that an NRC facility clearance is only required for the use or possession of NRC classified information at the facility;

Sections 95.17(a)(2) and 95.59 have been revised to change ''survey'' to ''review'';

Section 95.18 has been revised to reflect that senior management will be cleared to a level commensurate with the facility clearance rather than ''to the level of'' the facility clearance; and,

Section 95.25 has been revised to eliminate the requirement for changing security container combinations once every twelve months.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0046, 3150–0047, and 3150–0050.

The public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0046, –0047 and –0050), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7403.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The NRC carefully considered the effect on small entities in developing this final rule on the protection of classified information and has determined that none of the facilities affected by this rule would qualify as a small entity under the NRC's size standards (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, applies to this rulemaking initiative because it falls within the criteria of 10 CFR Part 50.109(a)(1), but that a backfit analysis is not required because this rulemaking qualifies for exemption under 10 CFR 50.109(a)(4)(iii) that reads ''That the regulatory action involves * * * redefining what level of protection to the * * * common defense and security should be regarded as adequate.''

List of Subjects

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 54

Administrative practice and procedure, Aging management review, Backfitting, Classified information, Criminal penalties, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 25, 50, 54 and 95.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959—1963 Comp., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 396.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

2. Section 25.1 is revised to read as follows:

§ 25.1 Purpose.

The regulations in this part establish procedures for granting, reinstating, extending, transferring, and terminating access authorizations of licensee personnel, licensee contractors or agents, and other persons (e.g., individuals involved in adjudicatory procedures as set forth in 10 CFR Part 2, subpart I) who may require access to classified information.

3. Section 25.3 is revised to read as follows:

§ 25.3 Scope.

The regulations in this part apply to licensees and others who may require access to classified information related to a license or an application for a license.

4. Section 25.5 is amended by revising the definitions *Access authorization* and *Need-to-know* and by adding the definitions of *Certificate holder, Classified information, Classified National Security Information, Cognizant Security Agency*, and *Visit authorization letters* in alphabetical order to read as follows:

§ 25.5 Definitions.

Access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, licensees and certificate holders, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to classified information.

* * * * *

Certificate holder means a facility operating under the provisions of Parts 71 or 76 of this chapter.

Classified information means either classified National Security Information, Restricted Data, or Formerly Restricted Data or any one of them. It is the generic term for information requiring protection in the interest of National Security whether classified under an Executive Order or the Atomic Energy Act.

Classified National Security Information means information that has been determined pursuant to E.O. 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

Cognizant Security Agency (CSA) means agencies of the Executive Branch that have been authorized by E.O. 12829 to establish an industrial security program for the purpose of safeguarding classified information under the jurisdiction of those agencies when disclosed or released to U.S. industry. These agencies are the Department of Defense, the Department of Energy, the Central Intelligence Agency, and the Nuclear Regulatory Commission. A facility has a single CSA which exercises primary authority for the protection of classified information at the facility. The CSA for the facility provides security representation for other government agencies with security interests at the facility. The Secretary of Defense has been designated as Executive Agent for the National Industrial Security Program.

* * * * *

Need-to-know means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information to perform or assist in a lawful and authorized governmental function under the cognizance of the Commission.

* * * * *

Visit authorization letters (VAL) means a letter, generated by a licensee, certificate holder or other organization under the requirements of 10 CFR Parts 25 and/or 95, verifying the need-to-know and access authorization of an individual from that organization who needs to visit another authorized facility for the purpose of exchanging or acquiring classified information related to the license.

5. In § 25.8, paragraphs (a) and (b) are revised to read as follows:

§ 25.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0046.

(b) The approved information collection requirements contained in this part appear in §§ 25.11, 25.17, 25.21, 25.23, 25.25, 25.27, 25.29, 25.31, 25.33, and 25.35.

* * * * *

6. In § 25.13, paragraph (a) is revised to read as follows:

§ 25.13 Maintenance of records.

(a) Each licensee or organization employing individuals approved for personnel security access authorization under this part, shall maintain records as prescribed within the part. These records are subject to review and inspection by CSA representatives during security reviews.

* * * * *

7. Section 25.17 is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

(a) Access authorizations must be requested for licensee employees or other persons (e.g., 10 CFR Part 2, subpart I) who need access to classified information in connection with activities under 10 CFR parts 50, 52, 54, 70, 72, or 76.

(b) The request must be submitted to the facility CSA. If the NRC is the CSA, the procedures in § 25.17 (c) and (d) will be followed. If the NRC is not the CSA, the request will be submitted to the CSA in accordance with procedures established by the CSA. The NRC will be notified of the request by a letter that includes the name, Social Security number and level of access authorization.

(c) The request must include a completed personnel security packet (see § 25.17(d)) and request form (NRC Form 237) signed by a licensee, licensee contractor official, or other authorized person.

(d)(1) Each personnel security packet submitted must include the following completed forms:

(i) Questionnaire for National Security Positions (SF–86, Parts 1 and 2) (Part 2 is to be completed by the applicant and placed in a sealed envelope which is to be forwarded to NRC unopened. No licensee, licensee contractor official, or other person at a facility is permitted to review Part 2 information);

(ii) Two standard fingerprint cards (FD–258);

(iii) Security Acknowledgment (NRC Form 176); and

(iv) Other related forms where specified in accompanying instructions (NRC Form 254).

(2) Only a Security Acknowledgment (NRC Form 176) need be completed by any person possessing an active access authorization, or who is being processed for an access authorization, by another Federal agency. The active or pending access authorization must be at an equivalent level to that required by the NRC and be based on an adequate investigation not more than five years old.

(e) To avoid delays in processing requests for access authorizations, each security packet should be reviewed for completeness and correctness (including legibility of response on the forms) before submittal.

(f) Applications for access authorization or access authorization renewal processing that are submitted to the NRC for processing must be accompanied by a check or money order, payable to the United States Nuclear Regulatory Commission, representing the current cost for the processing of each ''Q'' and ''L'' access authorization, or renewal request. Access authorization and access authorization renewal fees will be published each time the Office of Personnel Management notifies the NRC of a change in the rates it charges the NRC for the conduct of investigations. Any changed access authorization or access authorization renewal fees will be applicable to each access authorization or access authorization renewal request received upon or after the date of publication. Applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost, since the Commission may accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

8. Section 25.19 is revised to read as follows:

§ 25.19 Processing applications.

Each application for access authorization or access authorization renewal must be submitted to the CSA. If the NRC is the CSA, the application and its accompanying fee must be submitted to the NRC Division of Security. If necessary, the NRC Division of Security may obtain approval from the appropriate Commission office exercising licensing or regulatory authority before processing the access authorization or access authorization renewal request. If the applicant is disapproved for processing, the NRC Division of Security shall notify the submitter in writing and return the original application (security packet) and its accompanying fee.

9. Section 25.21 is revised to read as follows:

§ 25.21 Determination of initial and continued eligibility for access authorization.

(a) Following receipt by the CSA of the reports of the personnel security investigations, the record will be reviewed to determine that granting an access authorization or renewal of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. If this determination is made, access authorization will be granted or renewed. If the NRC is the CSA, questions as to initial or continued eligibility will be determined in accordance with Part 10 of Chapter I. If another agency is the CSA, that agency will, under the requirements of the NISPOM, have established procedures at the facility to resolve questions as to initial or continued eligibility for access authorization. These questions will be determined in accordance with established CSA procedures already in effect for the facility.

(b) The CSA must be promptly notified of developments that bear on continued eligibility for access authorization throughout the period for which the authorization is active (e.g., persons who marry subsequent to the completion of a personnel security packet must report this change by submitting a completed NRC Form 354, ''Data Report on Spouse'' or equivalent CSA form).

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC ''Q'' and ''L'' access authorizations must be renewed every five years from the date of issuance. An application for renewal must be submitted at least 120 days before the expiration of the five year period, and must include:

(i) A statement by the licensee or other person that the individual continues to require access to classified National Security Information or Restricted Data; and

(ii) A personnel security packet as described in § 25.17(d).

(2) Renewal applications and the required paperwork are not required for individuals who have a current and active access authorization from another Federal agency and who are subject to a reinvestigation program by that agency that is determined by the NRC to meet the NRC's requirements. (The DOE Reinvestigation Program has been determined to meet the NRC's requirements). For these individuals, the submission of the SF–86 by the licensee or other person to the other government agency pursuant to their reinvestigation requirements will satisfy the NRC renewal submission and paperwork requirements, even if less than five years has passed since the date of issuance or renewal of the NRC ''Q'' or ''L'' access authorization. Any NRC access authorization continued in response to the provisions of this paragraph will, thereafter, not be due for renewal until the date set by the other government agency for the next reinvestigation of the individual pursuant to the other agency's reinvestigation program. However, the period of time for the initial and each subsequent NRC ''Q'' or NRC ''L'' renewal application to the NRC may not exceed seven years. Any individual who is subject to the reinvestigation program requirements of another Federal agency but, for administrative or other reasons, does not submit reinvestigation forms to that agency within seven years of the previous submission, shall submit a renewal application to the NRC using the forms prescribed in § 25.17(d) before the expiration of the seven-year period.

(3) If the NRC is not the CSA, reinvestigation program procedures and requirements will be set by the CSA.

10. Section 25.23 is revised to read as follows:

§ 25.23 Notification of grant of access authorization.

The determination to grant or renew access authorization will be furnished in writing to the licensee or organization that initiated the request. Upon receipt of the notification of original grant of access authorization, the licensee or organization shall obtain, as a condition for grant of access authorization and access to classified information, an executed ''Classified Information Nondisclosure Agreement'' (SF–312) from the affected individual. The SF–312 is an agreement between the United States and an individual who is cleared for access to classified information. An employee issued an initial access authorization shall execute a SF–312 before being granted access to classified

information. The licensee or other organization shall forward the executed SF–312 to the CSA for retention. If the employee refuses to execute the SF–312, the licensee or other organization shall deny the employee access to classified information and submit a report to the CSA. The SF–312 must be signed and dated by the employee and witnessed. The employee's and witness' signatures must bear the same date. The individual shall also be given a security orientation briefing in accordance with § 95.33 of this chapter. Records of access authorization grant and renewal notification must be maintained by the licensee or other organization for three years after the access authorization has been terminated by the CSA. This information may also be furnished to other representatives of the Commission, to licensees, contractors, or other Federal agencies. Notifications of access authorization will not be given in writing to the affected individual except:

(a) In those cases in which the determination was made as a result of a Personnel Security Hearing or by Personnel Security Review Examiners; or

(b) When the individual also is the official designated by the licensee or other organization to whom written NRC notifications are forwarded.

11. Section 25.25 is revised to read as follows:

§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization or renewal of access authorization is withdrawn or canceled, the requestor shall notify the CSA immediately by telephone so that the full field investigation, National Agency Check with Credit Investigation, or other personnel security action may be discontinued. The requestor shall identify the full name and date of birth of the individual, the date of request, and the type of access authorization or access authorization renewal requested. The requestor shall confirm each telephone notification promptly in writing.

12. Section 25.27 is revised to read as follows:

§ 25.27 Reopening of cases in which requests for access authorizations are canceled.

(a) In conjunction with a new request for access authorization (NRC Form 237 or CSA equivalent) for individuals whose cases were previously canceled, new fingerprint cards (FD–257) in duplicate and a new Security Acknowledgment (NRC Form 176), or CSA equivalents, must be furnished to the CSA along with the request.

(b) Additionally, if 90 days or more have elapsed since the date of the last Questionnaire for Sensitive Positions (SF–86), or CSA equivalent, the individual must complete a personnel security packet (see § 25.17(d)). The CSA, based on investigative or other needs, may require a complete personnel security packet in other cases as well. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by the NRC is required.

13. Section 25.29 is revised to read as follows:

§ 25.29 Reinstatement of access authorization.

(a) An access authorization can be reinstated provided that:

(1) No more than 24 months has lapsed since the date of termination of the clearance;

(2) There has been no break in employment with the employer since the date of termination of the clearance;

(3) There is no known adverse information;

(4) The most recent investigation must not exceed 5 years (Top Secret, Q) or 10 years (Secret, L); and

(5) The most recent investigation must meet or exceed the scope of the investigation required for the level of access authorization that is to be reinstated or granted.

(b) An access authorization can be reinstated at the same, or lower, level by submission of a CSA-designated form to the CSA. The employee may not have access to classified information until receipt of written confirmation of reinstatement and an up-to-date personnel security packet will be furnished with the request for reinstatement of an access authorization. A new Security Acknowledgment will be obtained in all cases. Where personnel security packets are not required, a request for reinstatement must state the level of access authorization to be reinstated and the full name and date of birth of the individual to establish positive identification. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by the NRC is required.

14. In § 25.31, paragraphs (a) and (c) are revised to read as follows:

§ 25.31 Extensions and transfers of access authorizations.

(a) The NRC Division of Security may, on request, extend the authorization of an individual who possesses an access authorization in connection with a particular employer or activity, to permit access to classified information in connection with an assignment with another employer or activity.

* * * * *

(c) Requests for extension or transfer of access authorization must state the full name of the person, his date of birth and level of access authorization. The Director, Division of Security, may require a new personnel security packet (see § 25.17(c)) to be completed by the applicant. A fee, equal to the amount paid for an initial request, will be charged only if a new or updating investigation by the NRC is required.

* * * * *

15. Section 25.33 is revised to read as follows:

§ 25.33 Termination of access authorizations.

(a) Access authorizations will be terminated when:

(1) Access authorization is no longer required;

(2) An individual is separated from the employment or the activity for which he obtained an access authorization for a period of 90 days or more; or

(3) An individual, pursuant to 10 CFR part 10 or other CSA approved adjudicatory standards, is no longer eligible for access authorization.

(b) A representative of the licensee or other organization that employs the individual whose access authorization will be terminated shall immediately notify the CSA when the circumstances noted in paragraph (a)(1) or (a)(2) of this section exist; inform the individual that his access authorization is being terminated, and the reason; and that he will be considered for reinstatement of access authorization if he resumes work requiring it.

(c) When an access authorization is to be terminated, a representative of the licensee or other organization shall conduct a security termination briefing of the individual involved, explain the Security Termination Statement (NRC Form 136 or CSA approved form) and have the individual complete the form. The representative shall promptly forward the original copy of the completed Security Termination Statement to CSA.

16. Section 25.35 is revised to read as follows:

§ 25.35 Classified visits.

(a) The number of classified visits must be held to a minimum. The licensee, certificate holder, or other facility shall determine that the visit is necessary and that the purpose of the visit cannot be achieved without access

to, or disclosure of, classified information. All classified visits require advance notification to, and approval of, the organization to be visited. In urgent cases, visit information may be furnished by telephone and confirmed in writing.

(b) Representatives of the Federal Government, when acting in their official capacities as inspectors, investigators, or auditors, may visit a licensee, certificate holder or other's facility without furnishing advanced notification, provided these representatives present appropriate government credentials upon arrival. Normally, however, Federal representatives will provide advance notification in the form of an NRC Form 277, ''Request for Visit or Access Approval,'' with the ''need-to-know'' certified by the appropriate NRC office exercising licensing or regulatory authority and verification of NRC access authorization by the Division of Security.

(c) The licensee, certificate holder, or others shall include the following information in all Visit Authorization Letters (VAL) which they prepare.

(1) Visitor's name, address, and telephone number and certification of the level of the facility security clearance;

(2) Name, date and place of birth, and citizenship of the individual intending to visit;

(3) Certification of the proposed visitor's personnel clearance and any special access authorizations required for the visit;

(4) Name of person(s) to be visited;

(5) Purpose and sufficient justification for the visit to allow for a determination of the necessity of the visit; and

(6) Date or period during which the VAL is to be valid.

(d) Classified visits may be arranged for a 12 month period. The requesting facility shall notify all places honoring these visit arrangements of any change in the individual's status that will cause the visit request to be canceled before its normal termination date.

(e) The responsibility for determining need-to-know in connection with a classified visit rests with the individual who will disclose classified information during the visit. The licensee, certificate holder or other facility shall establish procedures to ensure positive identification of visitors before the disclosure of any classified information.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

17. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

18. Section 50.37 is revised to read as follows:

§ 50.37 Agreement limiting access to Classified Information.

As part of its application and in any event before the receipt of Restricted Data or classified National Security Information or the issuance of a license or construction permit, the applicant shall agree in writing that it will not permit any individual to have access to or any facility to possess Restricted Data or classified National Security Information until the individual and/or facility has been approved for such access under the provisions of 10 CFR Parts 25 and/or 95. The agreement of the applicant in this regard shall be deemed part of the license or construction permit, whether so stated therein or not.

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

19. The authority citation for Part 54 is revised to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842), E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

20. In § 54.17, paragraph (g) is revised to read as follows:

§ 54.17 Filing of application.

* * * * *

(g) As part of its application, and in any event before the receipt of Restricted Data or classified National Security Information or the issuance of a renewed license, the applicant shall agree in writing that it will not permit any individual to have access to or any facility to possess Restricted Data or classified National Security Information until the individual and/or facility has been approved for such access under the provisions of 10 CFR Parts 25 and/or 95. The agreement of the applicant in this regard shall be deemed part of the renewed license, whether so stated therein or not.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

21. The authority citation for Part 95 is revised to read as follows:

Authority: Secs. 145, 161, 193, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

22. Section 95.1 is revised to read as follows:

§ 95.1 Purpose.

The regulations in this part establish procedures for obtaining security facility approval and for safeguarding Secret and Confidential National Security Information and Restricted Data received or developed in conjunction with activities licensed, certified or regulated by the Commission. This part does not apply to Top Secret information because Top Secret information may not be forwarded to licensees, certificate holders, or others within the scope of an NRC license or certificate.

23. Section 95.3 is revised to read as follows:

§ 95.3 Scope.

The regulations in this part apply to licensees, certificate holders and others regulated by the Commission who may require access to classified National Security Information and/or Restricted

Data and/or Formerly Restricted Data (FRD) that is used, processed, stored, reproduced, transmitted, transported, or handled in connection with a license or certificate or an application for a license or certificate.

24. In § 95.5, the definitions for *Authorized classifier, National Security Information, NRC access authorization, Security facility approval,* and *Security survey* are removed and the definitions *Classified mail address, Infraction,* and *Need-to-know* are revised and the definitions *Access authorization, Classified National Security Information, Classified shipping address, Closed area, Cognizant Security Agency, Facility (Security) clearance, Foreign ownership control or influence, Restricted area, Security reviews, Supplemental Protection* and *Violation* are added in alphabetical order to read as follows:

§ 95.5 Definitions.

Access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, licensees and certificate holders, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to classified information.

* * * * *

Classified mail address means a mail address established for each facility approved by the NRC, to which all classified information for the facility is to be sent.

* * * * *

Classified National Security Information means information that has been determined pursuant to E.O. 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

Classified shipping address means an address established for a facility, approved by the NRC to which classified material that cannot be transmitted as normal mail is to be sent.

Closed area means an area that meets the requirements of the CSA, for the purpose of safeguarding classified material that, because of its size, nature, or operational necessity, cannot be adequately protected by the normal safeguards or stored during nonworking hours in approved containers.

Cognizant Security Agency (CSA) means agencies of the Executive Branch that have been authorized by E.O. 12829 to establish an industrial security program for the purpose of safeguarding classified information under the jurisdiction of those agencies when disclosed or released to U.S. industry. These agencies are the Department of Defense, the Department of Energy, the Central Intelligence Agency, and the Nuclear Regulatory Commission. A facility has a single CSA which exercises primary authority for the protection of classified information at the facility. The CSA for the facility provides security representation for other government agencies with security interests at the facility. The Secretary of Defense has been designated as Executive Agent for the National Industrial Security Program.

* * * * *

Facility (Security) Clearance (FCL) means an administrative determination that, from a security viewpoint, a facility is eligible for access to classified information of a certain category (and all lower categories).

Foreign ownership, control, or influence (FOCI) means a foreign interest has the power, direct or indirect, whether or not exercised, and whether or not exercisable through the ownership of a U.S. company's securities, by contractual arrangements or other means, to direct or decide matters affecting the management or operations of that company in a manner which may result in unauthorized access to classified information or may affect adversely the performance of classified contracts.

Infraction means any knowing, willful, or negligent action contrary to the requirements of E.O. 12958, or its implementing directives, that does not comprise a ''violation,'' as defined in this section.

* * * * *

Need-to-know means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function under the cognizance of the Commission.

* * * * *

Restricted area means a controlled access area established to safeguard classified material, that because of its size or nature, cannot be adequately protected during working hours by the usual safeguards, but that is capable of being stored during non-working hours in an approved repository or secured by other methods approved by the CSA.

* * * * *

Security reviews means aperiodic security reviews of cleared facilities conducted to ensure that safeguards employed by licensees and others are adequate for the protection of classified information.

Supplemental protection means additional security procedures such as intrusion detection systems, security guards, and access control systems.

Violation means any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information or any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of E.O. 12958 or its implementing directives.

25. Section 95.8 is revised to read as follows:

§ 95.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0047.

(b) The approved information collection requirements contained in this part appear in §§ 95.11, 95.15, 95.18, 95.19, 95.21, 95.25, 95.29, 95.33, 95.36, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.53 and 95.57.

26. In § 95.13, paragraph (a) is revised to read as follows:

§ 95.13 Maintenance of records.

(a) Each licensee, certificate holder or other person granted facility clearance under this part shall maintain records as prescribed within the part. These records are subject to review and inspection by CSA representatives during security reviews.

* * * * *

27. In § 95.15, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 95.15 Approval for processing licensees and others for facility clearance.

(a) A licensee, certificate holder or other person who has a need to use, process, store, reproduce, transmit, transport, or handle NRC classified information at any location in connection with Commission related activities shall promptly request an NRC facility clearance. This specifically includes situations where a licensee, certificate holder or other person needs

a contractor or consultant to have access to NRC classified information. However, it is not necessary for a licensee, certificate holder or other person to request an NRC facility clearance for access to another agency's classified information at that agency's facilities or to store that agency's classified information at their facility, provided no NRC classified information is involved and they meet the security requirements of the other agency. If NRC classified information is involved the requirements of § 95.17 apply.

(b) The request must include the name of the facility, the location of the facility and an identification of any facility clearance issued by another government agency. If there is no existing facility clearance, the request must include a security Standard Practice Procedures Plan that outlines the facility's proposed security procedures and controls for the protection of classified information, a floor plan of the area in which the matter is to be used, processed, stored, reproduced, transmitted, transported or handled; and Foreign Ownership, Control or Influence information.

* * * * *

28. Section 95.17 is revised to read as follows:

§ 95.17 Processing facility clearance.

(a) Following the receipt of an acceptable request for facility clearance, the NRC will either accept an existing facility clearance granted by a current CSA and authorize possession of license or certificate related classified information or process the facility for a facility clearance. Processing will include—

(1) A determination based on review and approval of a Standard Practice Procedure Plan that granting of the Facility Clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence to such a degree that a determination could not be made;

(2) An acceptable security review conducted by the NRC;

(3) Submitting key management personnel for personnel clearances (PCLs); and

(4) Appointing a U.S. citizen employee as the facility security officer.

(b) An interim Facility Clearance may be granted by the CSA on a temporary basis pending completion of the full investigative requirements.

§§ 95.18 and 95.19 [Redesignated]

29. §§ 95.18 and 95.19 are redesignated as §§ 95.19 and 95.20.

30. A new § 95.18 is added to read as follows:

§ 95.18 Key personnel.

The senior management official and the Facility Security Officer must always be cleared to a level commensurate with the Facility Clearance. Other key management officials, as determined by the CSA, must be granted an access authorization or be excluded from classified access. When formal exclusion action is required, the organization's board of directors or similar executive body shall affirm the following, as appropriate.

(a) Officers, directors, partners, regents, or trustees (designated by name) that are excluded may not require, may not have, and can be effectively excluded from access to all classified information disclosed to the organization. These individuals also may not occupy positions that would enable them to adversely affect the organization's policies or practices in the performance of activities involving classified information. This action will be made a matter of record by the organization's executive body. A copy of the resolution must be furnished to the CSA.

(b) Officers, directors, partners, regents, or trustees (designated by name) that are excluded may not require, may not have, and can be effectively denied access to higher-level classified information (specify which higher level(s)). These individuals may not occupy positions that would enable them to adversely affect the organization's policies or practices in the protection of classified information. This action will be made a matter of record by the organization's executive body. A copy of the resolution must be furnished to the CSA.

31. In the newly redesignated § 95.19, the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 95.19 Changes to security practices and procedures.

(a) Except as specified in paragraph (b) of this section, each licensee, certificate holder or other person shall obtain prior CSA approval for any proposed change to the name, location, security procedures and controls, or floor plan of the approved facility. A written description of the proposed change must be furnished to the CSA with copies to the Director, Division of Security, Office of Administration, NRC, Washington, DC 20555–0001 (if NRC is not the CSA), and the NRC Regional Administrator of the cognizant Regional Office listed in appendix A of part 73. The CSA shall promptly respond in writing to all such proposals. Some examples of substantive changes requiring prior CSA approval include—

* * * * *

(b) A licensee or other person may effect a minor, non-substantive change to an approved Standard Practice Procedures Plan for the safeguarding of classified information without receiving prior CSA approval, provided prompt notification of such minor change is furnished to the addressees noted in paragraph (a) of this section, and the change does not decrease the effectiveness of the Standard Practice Procedures Plan. Some examples of minor, non-substantive changes to the Standard Practice Procedures Plan include—

* * * * *

32. The newly redesignated § 95.20 is revised to read as follows:

§ 95.20 Grant, denial or termination of facility clearance.

The Division of Security shall provide notification in writing (or orally with written confirmation) to the licensee or other organization of the Commission's grant, acceptance of another agency's Facility Clearance, denial, or termination of facility clearance. This information must also be furnished to representatives of the NRC, NRC licensees, NRC certificate holders, NRC contractors, or other Federal agencies having a need to transmit classified information to the licensee or other person.

33. Section 95.21 is revised to read as follows:

§ 95.21 Withdrawal of requests for facility clearance.

When a request for facility clearance is to be withdrawn or canceled, the requester shall notify the NRC Division of Security immediately by telephone so that processing for this approval may be terminated. The notification must identify the full name of the individual requesting discontinuance, his position with the facility, and the full identification of the facility. The requestor shall confirm the telephone notification promptly in writing.

34. Section 95.23 is revised to read as follows:

§ 95.23 Termination of facility clearance.

(a) Facility clearance will be terminated when—

(1) There is no longer a need to use, process, store, reproduce, transmit, transport or handle classified matter at the facility; or

(2) The Commission makes a determination that continued facility

clearance is not in the interest of national security.

(b) When facility clearance is terminated, the licensee or other person will be notified in writing of the determination and the procedures outlined in § 95.53 apply.

35. In § 95.25, the section heading and paragraphs (a), (b), (c), (d), (g), (h), and (i) are revised and paragraph (j) is added to read as follows:

§ 95.25 Protection of classified information in storage.

(a) Secret documents, while unattended or not in actual use, must be stored in—

(1) A safe, steel file cabinet, or safe-type steel file container that has an automatic unit locking mechanism. All such receptacles will be accorded supplemental protection during non-working hours; or

(2) Any steel file cabinet that has four sides and a top and bottom (all permanently attached by welding, rivets or peened bolts so the contents cannot be removed without leaving visible evidence of entry) and is secured by a rigid metal lock bar and an approved key operated or combination padlock. The keepers of the rigid metal lock bar must be secured to the cabinet by welding, rivets, or bolts, so they cannot be removed and replaced without leaving evidence of the entry. The drawers of the container must be held securely, so their contents cannot be removed without forcing open the drawer. This type cabinet will be accorded supplemental protection during non-working hours.

(b) Confidential matter while unattended or not in use must be stored in the same manner as SECRET matter except that no supplemental protection is required.

(c) Classified lock combinations.

(1) A minimum number of authorized persons may know the combinations to authorized storage containers. Security containers, vaults, cabinets, and other authorized storage containers must be kept locked when not under the direct supervision of an authorized person entrusted with the contents.

(2) Combinations must be changed by a person authorized access to the contents of the container, or by the Facility Security Officer or his or her designee. Combinations must be changed upon—

(i) The initial use of an approved container or lock for the protection of classified material;

(ii) The termination of employment of any person having knowledge of the combination, or when the clearance granted to any such person has been withdrawn, suspended, or revoked;

(iii) The compromise or suspected compromise of a container or its combination, or discovery of a container left unlocked and unattended; or

(iv) At other times when considered necessary by the Facility Security Officer or CSA.

(d) Records of combinations. If a record is made of a combination, the record must be marked with the highest classification of material authorized for storage in the container. Superseded combinations must be destroyed.

* * * * *

(g) Posted information. Containers may not bear external markings indicating the level of classified material authorized for storage. A record of the names of persons having knowledge of the combination must be posted inside the container.

(h) End of day security checks.

(1) Facilities that store classified material shall establish a system of security checks at the close of each working day to ensure that all classified material and security repositories have been appropriately secured.

(2) Facilities operating with multiple work shifts shall perform the security checks at the end of the last working shift in which classified material had been removed from storage for use. The checks are not required during continuous 24-hour operations.

(i) Unattended security container found opened. If an unattended security container housing classified matter is found unlocked, the custodian or an alternate must be notified immediately. The container must be secured by protective personnel and the contents inventoried as soon as possible but not later than the next workday. A report reflecting all actions taken must be submitted to the responsible Regional Office (see appendix A, 10 CFR part 73 for addresses) with an information copy to the NRC Division of Security. The licensee shall retain records pertaining to these matters for three years after completion of final corrective action.

(j) Supervision of keys and padlocks. Use of key-operated padlocks are subject to the following requirements:

(1) A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks used for protection of classified material;

(2) A key and lock control register must be maintained to identify keys for each lock and their current location and custody;

(3) Keys and locks must be audited each month;

(4) Keys must be inventoried with each change of custody;

(5) Keys must not be removed from the premises;

(6) Keys and spare locks must be protected equivalent to the level of classified material involved;

(7) Locks must be changed or rotated at least annually, and must be replaced after loss or compromise of their operable keys; and

(8) Master keys may not be made.

36. Section 95.27 is revised to read as follows:

§ 95.27 Protection while in use.

While in use, matter containing classified information must be under the direct control of an authorized individual to preclude physical, audio, and visual access by persons who do not have the prescribed access authorization or other written CSA disclosure authorization (see § 95.36 for additional information concerning disclosure authorizations).

37. Section 95.29 is revised to read as follows:

§ 95.29 Establishment of Restricted or Closed areas.

(a) If, because of its nature, sensitivity or importance, matter containing classified information cannot otherwise be effectively controlled in accordance with the provisions of §§ 95.25 and 95.27, a Restricted or Closed Area must be established to protect such matter.

(b) The following measures apply to Restricted Areas:

(1) Restricted areas must be separated from adjacent areas by a physical barrier designed to prevent unauthorized access (physical, audio, and visual) into these areas.

(2) Controls must be established to prevent unauthorized access to and removal of classified matter.

(3) Access to classified matter must be limited to persons who possess appropriate access authorization or other written CSA disclosure authorization and who require access in the performance of their official duties or regulatory obligations.

(4) Persons without appropriate access authorization for the area visited must be escorted by an appropriate CSA access authorized person at all times while within Restricted or Closed Areas.

(5) Each individual authorized to enter a Restricted or Closed Area must be issued a distinctive form of identification (e.g., badge) when the number of employees assigned to the area exceeds thirty per shift.

(6) During nonworking hours, admittance must be controlled by protective personnel. Protective personnel shall conduct patrols during nonworking hours at least every 8 hours

and more frequently if necessary to maintain a commensurate level of protection. Entrances must be continuously monitored by protective personnel or by an approved alarm system.

(c) Due to the size and nature of the classified material, or operational necessity, it may be necessary to construct Closed Areas for storage because GSA-approved containers or vaults are unsuitable or impractical. Closed Areas must be approved by the CSA. The following measures apply to Closed Areas:

(1) Access to Closed Areas must be controlled to preclude unauthorized access. This may be accomplished through the use of a cleared employee or by a CSA approved access control device or system.

(2) Access must be limited to authorized persons who have an appropriate security clearance and a need-to-know for the classified material/information within the area. Persons without the appropriate level of clearance and/or need-to-know must be escorted at all times by an authorized person where inadvertent or unauthorized exposure to classified information cannot otherwise be effectively prevented.

(3) The Closed Area must be accorded supplemental protection during non-working hours. During these hours, admittance to the area must be controlled by locked entrances and exits secured by either an approved built-in combination lock or an approved combination or key-operated padlock. However, doors secured from the inside with a panic bolt (for example, actuated by a panic bar), a dead bolt, a rigid wood or metal bar, or other means approved by the CSA, do not require additional locking devices.

(4) Open shelf or bin storage of classified documents in Closed Areas requires CSA approval. Only areas protected by an approved intrusion detection system will qualify for approval.

38. Section 95.31 is revised to read as follows:

§ 95.31 Protective personnel.

Whenever protective personnel are used to protect classified information they shall:

(a) Possess an ''L'' access authorization (or CSA equivalent) if the licensee or other person possesses information classified Confidential National Security Information, Confidential Restricted Data or Secret National Security Information.

(b) Possess a ''Q'' access authorization (or CSA equivalent) if the licensee or other person possesses Secret Restricted Data related to nuclear weapons design, manufacturing and vulnerability information; and certain particularly sensitive Naval Nuclear Propulsion Program information (e.g., fuel manufacturing technology) and the protective personnel require access as part of their regular duties.

39. Section 95.33 is revised to read as follows:

§ 95.33 Security education.

All cleared employees must be provided with security training and briefings commensurate with their involvement with classified information. The facility may obtain defensive security, threat awareness, and other education and training information and material from their CSA or other sources.

(a) Facility Security Officer Training. Licensees and others are responsible for ensuring that the Facility Security Officer, and others performing security duties, complete security training deemed appropriate by the CSA. Training requirements must be based on the facility's involvement with classified information and may include a Facility Security Officer orientation course and, for Facility Security Officers at facilities with safeguarding capability, a Facility Security Officer Program Management Course. Training, if required, should be completed within 1 year of appointment to the position of Facility Security Officer.

(b) Government-Provided Briefings. The CSA is responsible for providing initial security briefings to the Facility Security Officer, and for ensuring that other briefings required for special categories of information are provided.

(c) Temporary Help Suppliers. A temporary help supplier, or other contractor who employs cleared individuals solely for dispatch elsewhere, is responsible for ensuring that required briefings are provided to their cleared personnel. The temporary help supplier or the using licensee or other facility may conduct these briefings.

(d) Classified Information Nondisclosure Agreement (SF–312). The SF–312 is an agreement between the United States and an individual who is cleared for access to classified information. An employee issued an initial access authorization must, in accordance with the requirements of § 25.23 of this chapter, execute an SF–312 before being granted access to classified information. The Facility Security Officer shall forward the executed SF–312 to the CSA for retention. If the employee refuses to execute the SF–312, the licensee or other facility shall deny the employee access to classified information and submit a report to the CSA. The SF–312 must be signed and dated by the employee and witnessed. The employee's and witness' signatures must bear the same date.

(e) Initial Security Briefings. Before being granted access to classified information, an employee shall receive an initial security briefing that includes the following topics:

(1) A Threat Awareness Briefing.

(2) A Defensive Security Briefing.

(3) An overview of the security classification system.

(4) Employee reporting obligations and requirements.

(5) Security procedures and duties applicable to the employee's job.

(f) Refresher Briefings. The licensee or other facility shall conduct periodic refresher briefings for all cleared employees. As a minimum, the refresher briefing must reinforce the information provided during the initial briefing and inform employees of appropriate changes in security regulations. This requirement may be satisfied by use of audio/video materials and by issuing written materials on a regular basis.

(g) Debriefings. Licensee and other facilities shall debrief cleared employees at the time of termination of employment (discharge, resignation, or retirement); when an employee's access authorization is terminated, suspended, or revoked; and upon termination of the Facility Clearance.

(h) Records reflecting an individual's initial and refresher security orientations and security termination must be maintained for three years after termination of the individual's access authorization.

40. Section 95.36 is revised to read as follows:

§ 95.36 Access by representatives of the International Atomic Energy Agency or by participants in other international agreements.

(a) Based upon written disclosure authorization from the NRC Division of Security that an individual is an authorized representative of the International Atomic Energy Agency (IAEA) or other international organization and that the individual is authorized to make visits or inspections in accordance with an established agreement with the United States Government, a licensee, certificate holder or other person subject to this part shall permit the individual (upon presentation of the credentials specified in § 75.7 of this chapter and any other credentials identified in the disclosure

authorization) to have access to matter which is classified National Security Information that is relevant to the conduct of a visit or inspection. A disclosure authorization under this section does not authorize a licensee, certificate holder, or other person subject to this part to provide access to Restricted Data.

(b) For purposes of this section, classified National Security Information is relevant to the conduct of a visit or inspection if—

(1) In the case of a visit, this information is needed to verify information according to § 75.13 of this chapter; or

(2) In the case of an inspection, an inspector is entitled to have access to the information under § 75.42 of this chapter.

(c) In accordance with the specific disclosure authorization provided by the Division of Security, licensees or other persons subject to this part are authorized to release (i.e., transfer possession of) copies of documents which contain classified National Security Information directly to IAEA inspectors and other representatives officially designated to request and receive classified National Security Information documents. These documents must be marked specifically for release to IAEA or other international organizations in accordance with instructions contained in the NRC's disclosure authorization letter. Licensees and other persons subject to this part may also forward these documents through the NRC to the international organization's headquarters in accordance with the NRC disclosure authorization. Licensees and other persons may not reproduce documents containing classified National Security Information except as provided in § 95.43.

(d) Records regarding these visits and inspections must be maintained for five years beyond the date of the visit or inspection. These records must specifically identify each document which has been released to an authorized representative and indicate the date of the release. These records must also identify (in such detail as the Division of Security, by letter, may require) the categories of documents that the authorized representative has had access and the date of this access. A licensee or other person subject to this part shall also retain Division of Security disclosure authorizations for five years beyond the date of any visit or inspection when access to classified information was permitted.

(e) Licensees or other persons subject to this part shall take such measures as may be necessary to preclude access to classified matter by participants of other international agreements unless specifically provided for under the terms of a specific agreement.

41. Section 95.37 is revised to read as follows:

§ 95.37 Classification and preparation of documents.

(a) Classification. Classified information generated or possessed by a licensee or other person must be appropriately marked. Classified material which is not conducive to markings (e.g., equipment) may be exempt from this requirement. These exemptions are subject to the approval of the CSA on a case-by-case basis. If a person or facility generates or possesses information that is believed to be classified based on guidance provided by the NRC or by derivation from classified documents, but which no authorized classifier has determined to be classified, the information must be protected and marked with the appropriate classification markings pending review and signature of an NRC authorized classifier. This information shall be protected as classified information pending final determination.

(b) Classification consistent with content. Each document containing classified information shall be classified Secret or Confidential according to its content. NRC licensees or others subject to the requirements of 10 CFR Part 95 may not make original classification decisions.

(c) Markings required on face of documents.

(1) For derivative classification of classified National Security Information:

(i) Derivative classifications of classified National Security Information must contain the identity of the source document or the classification guide, including the agency and office of origin, on the ''Derived From'' line and its classification date. If more than one source is cited, the ''Derived From'' line should indicate ''Multiple Sources.''

(ii) Declassification instructions. When marking derivatively classified documents, the ''DECLASSIFY ON'' line must carry forward the declassification instructions as reflected in the original document. If multiple sources are used, the instructions will carry forward the longest duration.

(iii) If the source document used for derivative classification contains the declassification instruction, ''Originating Agency's Determination Required'' (OADR), the new document should reflect the date of the original classification of the information as contained in the source document or classification guide. An example of the stamp might be as follows:

Derived From _____
(Source)
Reason _____
Declassify On: *Source Marked ''OADR''*
Date of Source: _____
Classifier: _____
(Name/Title/Number)

(iv) The derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document.

(2) For Restricted Data documents:

(i) Identity of the classifier. The identity of the classifier must be shown by completion of the ''Derivative Classifier'' line. The ''Derivative Classifier'' line must show the name of the person classifying the document and the basis for the classification. Dates for downgrading or declassification do not apply.

(ii) Classification designation (e.g., Secret, Confidential) and Restricted Data. NOTE: No ''Declassification'' instructions will be placed on documents containing Restricted Data.

(d) Placement of markings. The highest classification marking assigned to a document must be placed in a conspicuous fashion in letters at the top and bottom of the outside of the front covers and title pages, if any, and first and last pages on which text appears, on both bound and unbound documents, and on the outside of back covers of bound documents. The balance of the pages must be marked at the top and bottom with:

(1) The overall classification marking assigned to the document;

(2) The highest classification marking required by content of the page; or

(3) The marking UNCLASSIFIED if they have no classified content.

(e) Additional markings.

(1) If the document contains any form of Restricted Data, it must bear the appropriate marking on the first page of text, on the front cover and title page, if any. For example: ''This document contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to Administrative and Criminal Sanctions.''

(2) Limitation on reproduction or dissemination. If the originator or classifier determines that reproduction or further dissemination of a document should be restricted, the following additional wording may be placed on the face of the document:

Reproduction or Further Dissemination Requires Approval of

_____

If any portion of this additional marking does not apply, it should be crossed out.

(f) Portion markings. In addition to the information required on the face of the document, each classified document is required, by marking or other means, to indicate clearly which portions are classified (e.g., paragraphs or pages) and which portions are not classified. The symbols (S) for Secret, (C) for Confidential, (U) for Unclassified, or (RD) for Restricted Data may be used immediately preceding or following the text to which it applies, except that the designation must follow titles or subjects. (Portion marking of paragraphs is not required for documents containing Restricted Data.) If this type of portion marking is not practicable, the document must contain a description sufficient to identify the classified information and the unclassified information.

Example

Pages 1–3 Secret
Pages 4–19 Unclassified
Pages 20–26 Secret
Pages 27–32 Confidential

(g) Transmittal document. If a document transmitting classified information contains no classified information or the classification level of the transmittal document is not as high as the highest classification level of its enclosures, then the document must be marked at the top and bottom with a classification at least as high as its highest classified enclosure. The classification may be higher if the enclosures, when combined, warrant a higher classification than any individual enclosure. When the contents of the transmittal document warrants a lower classification than the highest classified enclosure(s) or combination of enclosures or requires no classification, a stamp or marking such as the following must also be used on the transmittal document:

UPON REMOVAL OF ATTACHMENTS THIS DOCUMENT IS:

(Classification level of transmittal document standing alone or the word ''UNCLASSIFIED'' if the transmittal document contains no classified information.)

(h) Classification challenges. Persons in authorized possession of classified National Security Information who in good faith believe that the information's classification status (i.e. that the document), is classified at either too high a level for its content (overclassification) or too low for its content (underclassification) are expected to challenge its classification status. Persons who wish to challenge a classification status shall—

(1) Refer the document or information to the originator or to an authorized NRC classifier for review. The authorized classifier shall review the document and render a written classification decision to the holder of the information.

(2) In the event of a question regarding classification review, the holder of the information or the authorized classifier shall consult the NRC Division of Security, Information Security Branch, for assistance.

(3) Persons who challenge classification decisions have the right to appeal the classification decision to the Interagency Security Classification Appeals Panel.

(4) Persons seeking to challenge the classification of information will not be the subject of retribution.

(i) Files, folders or group of documents. Files, folders, binders, or groups of physically connected documents must be marked at least as high as the highest classified document which they contain.

(j) Drafts and working papers. Drafts of documents and working papers which contain, or which are believed to contain, classified information must be marked as classified information.

(k) Classification guidance. Licensees, certificate holders, or other persons subject to this part shall classify and mark classified matter as National Security Information or Restricted Data, as appropriate, in accordance with classification guidance provided by the NRC as part of the facility clearance process.

42. Section 95.39 is revised to read as follows:

§ 95.39 External transmission of documents and material.

(a) Restrictions. Documents and material containing classified information received or originated in connection with an NRC license or certificate must be transmitted only to CSA approved security facilities.

(b) Preparation of documents. Documents containing classified information must be prepared in accordance with the following when transmitted outside an individual installation.

(1) The documents must be enclosed in two sealed opaque envelopes or wrappers.

(2) The inner envelope or wrapper must contain the addressee's classified mail address and the name of the intended recipient. The appropriate classification must be placed on both sides of the envelope (top and bottom) and the additional markings, as appropriate, referred to in § 95.37(e) must be placed on the side bearing the address.

(3) The outer envelope or wrapper must contain the addressee's classified mail address. The outer envelope or wrapper may not contain any classification, additional marking or other notation that indicates that the enclosed document contains classified information.

(4) A receipt that contains an unclassified description of the document, the document number, if any, date of the document, classification, the date of transfer, the recipient and the person transferring the document must be enclosed within the inner envelope containing the document and be signed by the recipient and returned to the sender whenever the custody of a Secret document is transferred. This receipt process is at the option of the sender for Confidential information.

(c) Methods of transportation.

(1) Secret matter may be transported only by one of the following methods within and directly between the U.S., Puerto Rico, or a U.S. possession or trust territory:

(i) U.S. Postal Service Express Mail and U.S. Postal Service Registered Mail.

Note: The ''Waiver of Signature and Indemnity'' block on the U.S. Postal Service Express Mail Label 11–B may not be executed and the use of external (street side) express mail collection boxes is prohibited.

(ii) A cleared ''Commercial Carrier.''

(iii) A cleared commercial messenger service engaged in the intracity/local area delivery (same day delivery only) of classified material.

(iv) A commercial delivery company, approved by the CSA, that provides nationwide, overnight service with computer tracing and reporting features. These companies need not be security cleared.

(v) Other methods as directed, in writing, by the CSA.

(2) Confidential matter may be transported by one of the methods set forth in paragraph (c)(1) of this section, by U.S. first class, express or certified mail. First class, express, or certified mail may be used in transmission of Confidential documents to Puerto Rico or any United States territory or possession.

(d) Telecommunication of classified information. Classified information may not be telecommunicated unless the telecommunication system has been approved by the CSA. Licensees, certificate holders or other persons who may require a secure telecommunication system shall submit a telecommunication plan as part of their

request for facility clearance, as outlined in § 95.15, or as an amendment to their existing Standard Practice Procedures Plan for the protection of classified information.

(e) Security of classified information in transit. Classified matter that, because of its nature, cannot be transported in accordance with § 95.39(c), may only be transported in accordance with procedures approved by the CSA. Procedures for transporting classified matter are based on a satisfactory transportation plan submitted as part of the licensee's, certificate holder, or other person's request for facility clearance or submitted as an amendment to its existing Standard Practice Procedures Plan.

43. Section 95.41 is revised to read as follows:

§ 95.41 External receipt and dispatch records.

Each licensee, certificate holder or other person possessing classified information shall maintain a record that reflects:

(a) The date of the material;

(b) The date of receipt or dispatch;

(c) The classification;

(d) An unclassified description of the material; and

(e) The identity of the sender from which the material was received or recipient to which the material was dispatched. Receipt and dispatch records must be retained for 2 years.

44. Section 95.43 is revised to read as follows:

§ 95.43 Authority to reproduce.

(a) Each licensee or other person possessing classified information shall establish a reproduction control system to ensure that reproduction of classified material is held to the minimum consistent with operational requirements. Classified reproduction must be accomplished by authorized employees knowledgeable of the procedures for classified reproduction. The use of technology that prevents, discourages, or detects the unauthorized reproduction of classified documents is encouraged.

(b) Unless restricted by the CSA, Secret and Confidential documents may be reproduced. Reproduced copies of classified documents are subject to the same protection as the original documents.

(c) All reproductions of classified material must be conspicuously marked with the same classification markings as the material being reproduced. Copies of classified material must be reviewed after the reproduction process to ensure that these markings are visible.

45. Section 95.45 is revised to read as follows:

§ 95.45 Changes in classification.

(a) Documents containing classified National Security Information must be downgraded or declassified as authorized by the NRC classification guides or as determined by the NRC. Requests for downgrading or declassifying any NRC classified information should be forwarded to the NRC Division of Security, Office of Administration, Washington, DC 20555–0001. Requests for downgrading or declassifying of Restricted Data will be forwarded to the NRC Division of Security for coordination with the Department of Energy.

(b) If a change of classification or declassification is approved, the previous classification marking must be canceled and the following statement, properly completed, must be placed on the first page of the document:

Classification canceled (or changed to)

_____

(Insert appropriate classification)

By authority of

_____

(Person authorizing change in classification)

By

_____

(Signature of person making change and date thereof)

(c) New markings reflecting the current classification status of the document will be applied in accordance with the requirements of § 95.37.

(d) Any persons making a change in classification or receiving notice of such a change shall forward notice of the change in classification to holders of all copies as shown on their records.

46. Section 95.47 is revised to read as follows:

§ 95.47 Destruction of matter containing classified information.

Documents containing classified information may be destroyed by burning, pulping, or another method that ensures complete destruction of the information that they contain. The method of destruction must preclude recognition or reconstruction of the classified information. Any doubts on methods should be referred to the CSA. If the document contains Secret information, a record of the subject or title, document number, if any, originator, its date of origination and the date of destruction must be signed by the person destroying the document and must be maintained in the office of the custodian at the time of destruction. These destruction records must be retained for two years after destruction.

47. Section 95.49 is revised to read as follows:

§ 95.49 Security of automatic data processing (ADP) systems.

Classified data or information may not be processed or produced on an ADP system unless the system and procedures to protect the classified data or information have been approved by the CSA. Approval of the ADP system and procedures is based on a satisfactory ADP security proposal submitted as part of the licensee's or other person's request for facility clearance outlined in § 95.15 or submitted as an amendment to its existing Standard Practice Procedures Plan for the protection of classified information.

48. Section 95.51 is revised to read as follows:

§ 95.51 Retrieval of classified matter following suspension or revocation of access authorization.

In any case where the access authorization of an individual is suspended or revoked in accordance with the procedures set forth in part 25 of this chapter, or other relevant CSA procedures, the licensee, certificate holder or other organization shall, upon due notice from the Commission of such suspension or revocation, retrieve all classified information possessed by the individual and take the action necessary to preclude that individual having further access to the information.

49. Section 95.53 is revised to read as follows:

§ 95.53 Termination of facility clearance.

(a) If the need to use, process, store, reproduce, transmit, transport, or handle classified matter no longer exists, the facility clearance will be terminated. The facility may deliver all documents and materials containing classified information to the Commission or to a person authorized to receive them or destroy all such documents and materials. In either case, the facility shall submit a certification of nonpossession of classified information to the NRC Division of Security.

(b) In any instance where facility clearance has been terminated based on a determination of the CSA that further possession of classified matter by the facility would not be in the interest of the national security, the facility shall, upon notice from the CSA, immediately deliver all classified documents and materials to the Commission along with a certificate of nonpossession of classified information.

50. Section 95.55 is revised to read as follows:

§ 95.55 Continued applicability of the regulations in this part.

The suspension, revocation or other termination of access authorization or the termination of facility clearance does not relieve any person from compliance with the regulations in this part.

51. Section 95.57 is revised to read as follows:

§ 95.57 Reports.

Each licensee or other person having a facility clearance shall immediately report to the CSA and the Regional Administrator of the appropriate NRC Regional Office listed in appendix A, 10 CFR part 73:

(a) Any alleged or suspected violation of the Atomic Energy Act, Espionage Act, or other Federal statutes related to classified information.

(b) Any infractions, losses, compromises or possible compromise of classified information or classified documents not falling within paragraph (a) of this section.

(c) In addition, an authorized classifier of a licensee, certificate holder or other organization subject to this Part shall complete an NRC Form 790, ''Classification Record,'' whenever matter containing classified information is generated, its classification changed or it is declassified. Notification of declassification is not required for any document or material which has an automatic declassification date. Completed NRC Form 790 must be submitted to the NRC Division of Security, Washington, DC 20555–0001, on a monthly basis.

52. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and reviews of the premises, activities, records and procedures of any person subject to the regulations in this part as the Commission and CSA deem necessary to effect the purposes of the Act, E.O. 12958 and/or NRC rules.

Dated at Rockville, Maryland, this 26th day of March 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–9063 Filed 4–11–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–030]

Establishment of Class E Airspace; Craig, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Craig, Colorado, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Craig-Moffat Airport. Additionally, this action corrects the airport name from Hayden, Craig-Moffat Airport, Colorado, to Craig-Moffat Airport, Colorado, as described in the Airport/Facility Directory, and it removes the Class E5 airspace previously listed under the text header of Hayden, Colorado (Hayden, Craig-Moffat Airport).

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Ted Mellan, Operations Branch, ANM–532.1, Federal Aviation Administration, Docket No. 96–ANM–030, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On February 12, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Craig, Colorado, to accommodate a new GPS SIAP to the Craig-Moffat Airport (62 FR 6506). This action also corrects the airport name, and eliminates confusion, with the removal of the Class E5 airspace previously listed under the text header of Hayden, Colorado (Hayden, Craig-Moffat Airport). This action will ensure correct references to airports are made, as described in the Airport/Facility Directory, and will accurately distinguish between the classes of airspace associated with Craig, Colorado, and Hayden, Colorado.

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 700 feet or more above the surface of the earth are published in paragraph 6005 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 establishes Class E airspace at Craig, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Hayden, CO [Removed]

* * * * *

ANM CO E5 Craig, CO [New]

Craig-Moffat Airport, CO
(Lat. 40°29′43″ N, long. 107°31′17″ W)
Hayden VOR/DME
(Lat. 40°31′12″ N, long. 107°18′18″ W)

That airspace extending upward from 700 feet above the surface within 4.3 miles each side of the Hayden VOR/DME 262° radial extending from the VOR/DME to 18.5 miles southwest of the VOR/DME; that airspace extending upward from 1,200 feet above the surface beginning at lat. 40°35′00″ N, long. 108°24′00″ W; to lat. 40°47′00″ N, long. 107°34′00″ W; to lat. 40°36′00″ N, long. 106°38′00″ W; to lat. 40°21′30″ N, long. 106°38′00″ W; to lat. 40°13′00″ N, long 108°20′00″ W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on April 1, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–9417 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 96–ANM–21]

RIN 2120–AA66

Establishment of Temporary Restricted Area R–3203D; Orchard, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a temporary Restricted Area 3203D (R–3203D) at Orchard, ID, for the period June 1–22, 1997. The Idaho Army National Guard has requested the establishment of this temporary area to provide essential ground maneuvering space needed to meet its increased annual training requirements. This temporary area is established adjacent to existing Restricted Area 3203A (R–3203A).

EFFECTIVE DATE: 0901 UTC, June 1, 1997.

FOR FURTHER INFORMATION CONTACT: Bil 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:

History

On December 5, 1996, the FAA proposed to establish a temporary restricted area, R–3203D, at Orchard, ID, from June 1–22, 1997, to provide essential ground maneuvering space needed to meet its increased annual training requirements (61 FR 64495). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the Notice.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.32 of part 73 was republished in FAA Order 7400.8D dated July 11, 1996.

The Rule

This amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) temporarily establishes R–3203D at Orchard, ID. R–3203D is adjacent to the existing R–3203A. R–3203D provides additional ground maneuvering space needed by the Idaho Army National Guard to satisfy its annual training requirements. The restricted area will be in effect for the period June 1–22, 1997. Expansion in the number of gun batteries assigned to Field Artillery units, along with requirements that each assigned battery accomplish several moves per day to different surface firing points, has created the need to temporarily expand the available restricted airspace to provide for more effective training. All artillery firing is directed into existing impact areas located approximately in the center of R–3203A. R–3203D provides protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing R–3203A. In addition, R–3203D will be released to the FAA for public use during periods it is not required for military training.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) 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.

Environmental Review

The Idaho Army National Guard; Engineering Idaho Army National Guard; United States Department of the Interior, Bureau of Land Management; U.S. Environmental Protection Agency; and Idaho Departments of Agriculture, Commerce, Employment, Lands and Parks, and Recreation performed an environmental impact statement (EIS), and issued a finding of no significant impact (FONSI) upon the environment. The FAA adopts the U.S. Army FONSI on the basis of the conclusions contained in the EIS.

Use of the subject area is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of the National Environmental Policy Act (NEPA) and would not significantly affect the quality of the human environment or otherwise include a condition requiring consultation pursuant to Section 102(2) of NEPA.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 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.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

* * * * *

R–3203D Orchard Training Area, ID [New]

Boundaries. Beginning at lat. 43°14′00″ N., long. 116°16′30″ W.; to lat. 43°17′51″ N., long. 116°16′25″ W.; to lat. 43°19′02″ N., long. 116°14′45″ W.; to lat. 43°19′02″ N., long. 116°06′36″ W.; to lat. 43°15′58″ N., long. 116°01′12″ W.; to lat. 43°15′00″ N., long. 116°01′00″ W.; to lat. 43°17′00″ N., long. 116°05′00″ W.; to lat. 43°17′00″ N., long. 116°12′00″ W.; to the point of beginning.

Designated altitudes. Surface to and including 22,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance for the period June 1–22, 1997, only.

Controlling agency. FAA, Boise ATCT.

Using agency. Idaho Army National Guard.

* * * * *

Issued in Washington, DC, on April 4, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic, Airspace Management.

[FR Doc. 97–9416 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contract Market Rule Review Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending Regulation 1.41a to revise certain procedures relating to the review of contract market rules. Related amendments revising the procedures and time periods applicable to the Commission's review of contract market rules previously have been adopted.[1] The instant amendments revise Regulation 1.41a, which governs the authority delegated to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis for purposes of processing certain contract market rule submissions. Specifically, the instant amendments revise Regulation 1.41a to conform to the procedures and time periods previously adopted by the Commission. The instant amendments also include several clarifying revisions of Regulation 1.41a.

EFFECTIVE DATE: April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581. Telephone: (202) 418–5484.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 5a(a)(12)(A) of the Commodity Exchange Act (''Act''), 7 U.S.C. § 7a(a)(12)(A), provides that all rules[2] of a contract market that relate to terms and conditions[3] in futures or options contracts traded on or subject to the rules of a contract market must be submitted to the Commission for its prior approval. Section 5a(a)(12)(A) further requires that contract markets submit all other rules to the Commission. Such other rules may be made effective ten days after Commission receipt unless, within the ten-day period, the Exchange requests Commission approval or the Commission notifies the Exchange that it intends to review the rules for approval.

As noted above, the Commission recently revised the procedures under which it conducts reviews of contract market rules. These revisions generally streamline the procedures and shorten the review periods applicable to the Commission's review of contract market rules. The Commission is now revising its rules applicable to the delegation of authority to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis (collectively, ''the Directors'') as set out in Commission Regulation 1.41a. Specifically, Regulation 1.41a delegates to the Directors the authority to make certain decisions regarding rule submissions. The primary effect of the instant amendments is to delegate additional authority to the Directors in order to apply the revised procedures and time periods for Commission review of contract market rules in an effective manner.

II. Amendments to Regulation 1.41a

A. Regulation 1.41a(2)(ii)—Notification That Rules Require Approval

Several provisions of the Act other than Section 5a(a)(12)(A) require Commission approval of contract market rules: Section 4b(b) (crossing of orders); Section 4c(a) (exchange of futures for physicals, transfer trades and office trades); and Section 4f(b) (financial requirements for futures commission merchants). Paragraph (a)(2) is being amended to state that the Directors have delegated authority to determine and to notify a contract market that a rule submitted pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41(c) for implementation without Commission approval constitutes a rule that requires prior Commission approval pursuant to a specific Section of the Act or under a Commission regulation other than Regulation 1.41(b). Current Regulation 1.41a delegates to the Directors the authority to remit such a rule but does not expressly state that the Directors may notify a contract market of their determination to review such rule for Commission approval.

B. Regulation 1.41a(3) (i) and (ii)—Notification That Rules May be Placed into Effect Without Approval

Currently, paragraph (a)(3) states that the Directors may determine whether rules submitted under Regulation 1.41(c) do not require prior Commission approval under Section 5a(a)(12)(A) of the Act and Regulation 1.41(b) and that such rules may become effective prior to the expiration of the ten day period following the Commission's receipt of such rules. Under the amendments, paragraph (a)(3) is being divided into three subparagraphs in order to incorporate the revised procedures and time periods previously adopted by the Commission for the review of contract market rules.

New paragraph (a)(3)(i), which includes the pre-existing provisions of paragraph (a)(3), is being amended to provide that the Directors may notify a contract market, as well as determine, that rules submitted for implementation without Commission approval do not require such approval under either Regulation 1.41(b) or 1.41(c). This change simply incorporates the condition that contract market rules that do not relate to terms and conditions, but that require approval under another provision of the Act or regulations, are to be submitted pursuant to Regulation 1.41(c) under the Commission's revised procedures for reviewing contract market rules instead of Regulation 1.41(b), as was formerly the case.

New paragraph (a)(3)(ii) provides that the Directors may determine and notify a contract market that rules submitted for Commission approval under Regulation 1.41(c) do not require prior Commission approval under Section 5a(a)(12)(A) of the Act and Regulation 1.41(b) or Regulation 1.41(c) and may be made effective at the expiration of the applicable review period. As in the case of paragraph (a)(3)(i), paragraph (a)(3)(ii)

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[1] *See* 62 **FR** 10427. That notice announced the adoption of amendments to Commission Regulations 1.41(a) and 1.41(b). These amendments, which revise the procedures for the review of contract market rules, will become effective on April 7, 1997.

[2] Commission Regulation 1.41(a)(1) defines ''rule'' of a contract market to mean:

* * * any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board thereof or any committee thereof.

[3] Commission Regulation 1.41(a)(2) defines ''terms and conditions'' to mean:

* * * any definition of the trading unit or the specific commodity underlying a contract for future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions shall be deemed to include provisions relating to the following:

(i) Quality or quantity standards for a commodity and any applicable exemptions or discounts;

(ii) Trading hours, trading months and the listing of contracts:

(iii) Minimum and maximum price limits and the establishment of settlement prices;

(iv) Position limits and position reporting requirements;

(v) Delivery points and locational price differentials;

(vi) Delivery standards and procedures, including alternatives to delivery and applicable penalties or sanctions for failure to perform;

(vii) Settlement of the contract;

(viii) Payment or collection of commodity option premiums or margins.

is being added to Regulation 1.41a to incorporate the requirement that rules which do not relate to terms and conditions, but which nonetheless require Commission approval under another provision of the Act or regulations, must be submitted pursuant to Commission Regulation 1.41(c).

More significantly, paragraph (a)(3)(ii) delegates to the Directors the authority to determine whether a rule submitted for Commission approval, but which neither the Act nor the Commission's regulations require to be reviewed for approval prior to implementation, should be implemented without Commission approval at the expiration of the applicable review period. Previously, absent Commission approval, such implementation was only available at the expiration of 180 days following Commission receipt of the contract market rule. Thus, the amendments enable the Directors to make this determination in conformity with the Commission's previously revised review procedures and time periods, prior to the expiration of the 180 day period.[4]

C. Regulation 1.41a(3)(iii)—Notification that Rules Raise Novel or Complex Issues

New paragraph (a)(3)(iii) delegates authority to the Directors to administer those contract market rules submitted for Commission approval under Regulation 1.41(c) but which raise novel or complex issues, or are of major economic significance. This amendment simply provides that the Directors may determine and notify a contract market that the review period for the rule submission is being extended per the applicable review periods set out in Regulation 1.41(c)(1)(iii).

III. Related Matters

A. Notice and Comment

The Administrative Procedure Act, 5 U.S.C. § 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations. Section 553(b) sets forth an exception, however, for rules of agency organization, procedure, or practice. The instant amendments apply expedited procedures to the authority delegated to the Directors of the Divisions of Trading and Markets and Economic Analysis for the review of certain contract market rules. The Commission has determined that these amendments relate to internal Commission procedure and therefore that notice and comment is not required.

Section 553(b) also sets forth an exception to the requirement of notice and opportunity for public comment when the Commission for good cause finds such notice and public comment are unnecessary or contrary to the public interest. Section 553(d) provides that publication of a substantive rule shall be made not less than thirty days before its effective date unless as otherwise provided by the agency for good cause found. The Commission finds that notice and public comment on the rule changes announced herein are unnecessary and they can be made effective immediately because the changes do not limit any person's substantive rights and do not establish any new obligations under the Act. To the contrary, these changes simplify compliance with the Act by delegating authority to the Directors to process contract market rules according to standards which shorten the time periods applicable to the review of contract market rules and which have been previously adopted following notice and comment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. § 601 *et seq.*, requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The RFA defines the term ''rule'' to mean ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to [5 U.S.C.] § 553(b).'' As noted above, however, § 553(b) does not require that the Commission publish a notice of proposed rulemaking for the amendments to Regulation 1.41a, and a flexibility analysis of these amendments is therefore not required. See § 601(2). See also §§ 603 and 604.[5]

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (''PRA''), 44 U.S.C. § 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While the rule amendments adopted herein have no burden, the group of rules (3038–0022) of which this is a part has the following burden:

Average burden hours per response.	3,546.26
Number of respondents	10,971.00
Frequency of response	On Occasion

Persons wishing to comment on the information that would be required by the proposed rulemaking should contact David Rostker, Office of Management and Budget (''OMB''), Room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Gerald P. Smith, Clearance Officer, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street N.W., Washington D.C. 20581. Telephone: (202) 418–5160.

List of Subjects in 17 CFR Part 1

Commodity exchanges, Contract markets, Rule review procedures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 5, 5a, 6 and 8a thereof, 7 U.S.C. §§ 6c, 7, 7a, 8 and 12a, the Commission hereby amends Title 17, Chapter I, Part 1 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.41a is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 1.41a Delegation of authority to the Directors of the Division of Trading and Markets and the Division of Economic Analysis to process certain contract market rules.

(a) * * *

(2) Pursuant to §§ 1.41(b) or 1.41(c) to determine, and to notify a contract market, that:

(i) Pursuant to § 1.41(b), a rule submitted pursuant to section 5a(a)(12)(A) of the Act and § 1.41(c) relates to terms and conditions, as defined in § 1.41(a)(2);

[4] This amendment of Regulation 1.41a, combined with the Commission's revised contract market rule review procedures, authorize the Directors to make the determination to notify a contract market that a rule voluntarily submitted by a contract market for Commission approval could be implemented without Commission approval at the expiration of ten, 45, or 75 days, whichever was applicable. Absent such amendment, the contract market rule could not be implemented absent Commission approval until the expiration of the 180 day period following Commission receipt of the rule.

[5] A flexibility analysis would not be required in any case in this matter, since the amendments would affect contract markets, which the Commission previously has determined are not ''small entities'' for purposes of the RFA. Thus, these rule amendments would not have a significant economic impact on a substantial number of ''small entities.'' *See* § 605(b).

(ii) Pursuant to § 1.41(c), a rule submitted pursuant to section 5a(a)(12)(A) of the Act and § 1.41(c) for implementation without Commission approval constitutes a rule that requires prior Commission approval pursuant to a specific section of the Act or Commission regulations;

(3) Pursuant to § 1.41(c) to determine, and to notify a contract market, that:

(i) Rules submitted for implementation without Commission approval under § 1.41(c) do not require prior Commission approval under section 5a(a)(12)(A) of the Act and § 1.41(b) or § 1.41(c) and that such rules may become effective prior to the expiration of the ten day period following the receipt of such rules by the Commission;

(ii) Rules submitted for Commission approval under § 1.41(c) do not require prior Commission approval under section 5a(a)(12)(A) of the Act and § 1.41(b) or § 1.41(c) and may be made effective at the expiration of the applicable review period;

(iii) Rules submitted for Commission approval under § 1.41(c) raise novel or complex issues, or are of major economic significance, and that the review period has been extended pursuant to § 1.41(c)(1)(iii); and

* * * * *

Issued in Washington, D.C., on April 7, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–9398 Filed 4–10–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 11

Delegation of Authority To Conduct Investigations in Assistance of Foreign Futures Authorities

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending certain provisions of the Commission's Regulations to formalize the authority of the Director of the Division of Enforcement to conduct investigations in assistance of foreign futures authorities. The purpose of the amendments is to set forth agency procedure and practice with respect to conducting such investigations.

DATES: Effective: April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Ethiopis Tafara, International Operations Attorney, Division of Enforcement, US Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5362.

SUPPLEMENTARY INFORMATION: Sections 6(c) and 8 of the Commodity Exchange Act as amended, 7 U.S.C. §§ 12, 15 (1994), authorize the Commission to investigate violations of the Act and Commission regulations and orders. Part 11 of the Commission Rules delegates this authority to the Division of Enforcement. In the Futures Trading Practice Act of 1992, Pub. L. 102–546, 106 Stat. 3590, Congress added Section 12(f) of the Commodity Exchange Act, 7 U.S.C. § 16(f) (1994), authorizing the Commission to conduct investigations in assistance of foreign futures authorities. The Commission has amended Part 11 of the Commission Rules formally to authorize the Director of the Division of Enforcement to conduct these investigations. The amended Rules are not substantive in content and simply set forth agency procedure and practice with respect to investigations conducted in assistance of foreign futures authorities. Consequently, the Commission is not seeking public comment. Similarly, the Commission finds good cause to make these amendments effective immediately.

List of Subjects in 17 CFR Part 11

Investigations.

PART 11—[AMENDED]

For the reasons set forth above, Part 11 of Title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 11 is revised as follows:

Authority: 7 U.S.C. 4a(j), 9 and 15, 12, 12a(5), 12(f).

2. Section 11.1 is revised as follows:

§ 11.1 Scope and applicability of rules.

The rules of this part apply to investigatory proceedings conducted by the Commission or its staff pursuant to Sections 6(c) and 8 and 12(f) of the Commodity Exchange Act, as amended, 7 U.S.C. 9 and 15 and 12 and 16(f) (1994), to determine whether there have been violations of that Act, or the rules, regulations or orders adopted thereunder, or, in accordance with the provisions of Section 12(f) of the Act, whether there have been violations of the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an application for designation or registration under the Act should be denied.

3. Section 11.2, paragraph (a) is revised as follows:

§ 11.2 Authority to conduct investigations.

(a) The Director of the Division of Enforcement and members of the Commission staff acting pursuant to his authority and under his direction may conduct such investigations as he deems appropriate to determine whether any persons have violated, are violating, or are about to violate the provisions of the Commodity Exchange Act, as amended, or the rules, regulations or orders adopted by the Commission pursuant to that Act, or, in accordance with the provisions of Section 12(f) of the Act, whether any persons have violated, are violating or are about to violate the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an applicant for registration or designation meets the requisite statutory criteria.

* * * * *

Issued in Washington, DC on March 28, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–9399 Filed 4–10–97; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–005]

RIN 2115–AE46

Special Local Regulations; Charleston to Bermuda Sailboat Race, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Charleston to Bermuda Sailboat Race. The race will start on May 11, 1997, between the hours of 11 a.m. and 3 p.m. Eastern Daylight Time (EDT) near Waterfront Park on the Charleston Peninsula, and will transit out to sea by the South, Mount Pleasant, and Fort Sumter Ranges in Charleston Harbor. The nature of the event and the closure of portions of Charleston Harbor creates an extra or unusual hazard on the navigable waters of Charleston Harbor, Charleston, SC. These regulations are necessary for the safety of life on the navigable waters during the event.

EFFECTIVE DATE: These regulations become effective 10 a.m. and terminate 3 p.m. on May 11, 1997.

FOR FURTHER INFORMATION CONTACT: ENS M.J. DaPonte, Project Officer, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 3, 1997, the Coast Guard published a notice of proposed rulemaking entitled Charleston to Bermuda Sailboat Race, Charleston, SC [CGD07–97–005] in the **Federal Register** (62 FR 9405). The comment period ended on April 2, 1997. The Coast Guard received no comments during the notice of proposed rulemaking comment period. A public hearing was not requested and no hearing was held.

Background and Purpose

These regulations are needed to provide for the safety of life during start of the Charleston to Bermuda Sailboat Race. The regulations are intended to promote safe navigation on Charleston Harbor immediately before, during, and immediately after the start of the race by controlling the traffic entering, exiting, and traveling within the regulated area. The anticipated concentration of commercial traffic, spectator vessels, and participating vessels associated with the Race poses a safety concern which is addressed in these special local regulations.

The regulations will not permit the entry or movement of spectator vessels and other non-participating vessel traffic between the starting area at the southern end of Commercial Anchorage Area D (33 CFR 110.173), and the entrance to the Charleston Harbor jetties on Sunday, May 11, 1997 from 10 a.m. to 3 p.m. EDT. These regulations will permit the movement of spectator vessels and other non-participants within the regulated area before the start of the race, and after the last participant clears the Charleston Harbor jetties at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. These regulations will last for only 5 hours on May 11, 1997.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic-impact on a substantial number of small entities. ''Small Entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal, and certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities because the special local regulations will only be in effect for approximately 5 hours in a limited area.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Section 2.B.2.e(34)(h) of Commandant Instruction M16475.1B that it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends part 100 of title 33, Code of Federal Regulations, as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. A new temporary section 100.35–T07–075 is added to read as follows:

§ 100.35–T07–075 Charleston to Bermuda Sailboat Race, Charleston Harbor, Charleston, SC.

(a) *Definitions.*

(1) *Regulated area.* The regulated area includes all waters of Charleston Harbor, Charleston, SC and the Atlantic Ocean within the following points:

Point	Latitude	Longitude	
A	32°47′06″ N	079°55′25″ W	then to
B	32°47′06″ N	079°55′05″ W	then to
C	32°46′00″ N	079°55′00″ W	then to
D	32°45′41″ N	079°54′37″ W	then to
E	32°45′41″ N	079°51′54″ W	then to
F	32°44′30″ N	079°50′35″ W	then to
G	32°43′24″ N	079°48′16″ W	then to
H	32°43′02″ N	079°48′30″ W	then to
I	32°44′14″ N	079°50′51″ W	then to
J	32°45′25″ N	079°52′04″ W	then to
K	32°45′25″ N	079°55′00″ W	then to
L	32°45′41″ N	079°55′22″ W	

Thence back to point A. All coordinates referenced use Datum: NAD 83.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group, Charleston, SC.

(b) *Regulations.*

(1) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard Patrol Commander may delay, modify, or cancel the race as conditions or circumstances require. The Coast Guard Patrol Commander shall monitor the start of the race with the race committee, to allow for a window of opportunity for the race participants to depart the harbor with minimal interference with inbound or outbound commercial traffic.

(3) Spectator and other non-participating vessels may follow the participants out to sea while maintaining a minimum distance of 500 yards behind the last participant, at the discretion of the Patrol Commander. Upon the transit of the last race participant past the outermost boundary of the Charleston jetties, all vessels may resume normal operations.

(c) This section is effective at 10 a.m. and terminates at 3 p.m. EDT on May 11, 1997.

Dated: April 1, 1997.

J.W. Lockwood,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 97–9216 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08–97–008]

RIN 2115–AE84

Amendment to Regulated Navigation Area Regulations; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: On March 18, 1997, the Coast Guard established a temporary regulated navigation area affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 88 above Head of Passes. On March 21, 1997, the Coast Guard amended the temporary regulated navigation area by extending the southern limit of the regulated navigation area to the boundary of the territorial sea at the approaches to Southwest Pass and included operating requirements affecting the operation of self-propelled vessels of 1600 gross tons or greater. Increasing high water conditions caused the Coast Guard to amend this regulation for a second time on March 28, 1997 to establish additional safety measures applicable to U.S. flagged and foreign-flagged vessels authorized to carry cargoes listed under Title 46, Code of Federal Regulations Part 151 (chemical barges) and Parts 153–154 (chemical and gas ships). The recent loss of control of a tow as it entered the Mississippi River from the Port Allen lock and several near-misses involving tows longer than 600 feet exiting locks into the Mississippi River has evidenced the need to further limit the length of tows. For this reason the district commander is further amending this regulation. The amendment prohibits tows in excess of 600 feet from entering or exiting lock forebays.

The amendment also clarifies the horsepower restrictions in the earlier regulation to make it clear that the horsepower rating of escort tugs may not be counted in establishing the number of barges that may be included in a tow. Only the horsepower rating of the single towboat made up to and pushing the tow may be considered in determining the maximum number of barges that may be included in the tow.

The Coast Guard is also extending the effective date of the regulation to April 20, 1997, because the high water conditions are expected to last longer than originally contemplated. The regulated navigation area is needed to protect vessels, bridges, shore-side facilities and the public from a safety hazard created by high water and resulting flooding along the Lower Mississippi River. Downbound barge traffic, chemical ships and gas ships, as well as self-propelled vessels of 1600 or more gross tons are prohibited from operating in this area unless they are in compliance with this regulation.

DATES: This amended regulation is effective at 11:00 a.m. on April 4, 1997 and terminates at 12 p.m. on April 20, 1997.

FOR FURTHER INFORMATION CONTACT:

CDR Harvey R. Dexter, Marine Safety Division, USCG Eighth District at New Orleans, LA (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On March 18, 1997 (62 FR 14637, March 22, 1997), the Coast Guard established a temporary regulated navigation area affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 88 above Head of Passes. On March 21, 1997 (62 FR 15398, April 1, 1997), the Coast Guard amended the temporary regulated navigation area by extending the southern limit of the regulated navigation area to the boundary of the territorial sea at the approaches to Southwest Pass and included operating requirements affecting the operation of self-propelled vessels of 1600 gross tons or greater. Increasing high water conditions caused the Coast Guard to amend this regulation for a second time on March 28, 1997 (62 FR 16081 April 4, 1997) to establish additional safety measures applicable to U.S. flagged and foreign-flagged vessels authorized to carry cargoes listed under Title 46, Code of Federal Regulations Part 151 (chemical barges) and parts 153–154 (chemical and gas ships). The recent loss of control of a tow as it entered the Mississippi River from the Port Allen lock and several near-misses involving tows longer than 600 feet exiting locks into the Mississippi River has evidenced the need to further limit the length of tows. For this reason the district commander is further amending this regulation. The amendment prohibits tows in excess of 600 feet from entering or exiting lock forebays.

Although Mississippi River floodwater levels have receded somewhat, river current remains at a record high level. The recent loss of control of a tow as it entered the Mississippi River from the Port Allen lock and several near-misses involving tows longer than 600 feet exiting locks into the Mississippi River has evidenced the need to further limit the length of tows. By limiting the maximum length of tows during the critical period when they are entering or exiting locks along the Mississippi River to or from the relatively still water of a lock forebay, towboats will be able to exercise greater control of the tow during this critical period. This amendment prohibits tows in excess of 600 feet from entering or exiting lock forebays.

This amendment also clarifies the horsepower restrictions in the earlier regulation to make it clear that the horsepower rating of escort tugs may not be counted in establishing the number of barges that may be included in a tow. Only the horsepower rating of the single towboat made up to and pushing the

tow may be considered in determining the maximum number of barges that may be included in the tow. The Coast Guard is also extending the effective date of the regulation to April 20, 1997, because the high water conditions are expected to last longer than originally contemplated.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to ensure self-propelled vessels are capable of operating safely in the increased currents present on the river and prevent downbound towing vessels from colliding with bridges and shore-side structures, and colliding with other vessels, causing danger to the public.

Regulatory Evaluation

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

For the reasons expressed below (Small Entities), the Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Small entities may include small towing companies that could be affected by this rule. This amendment may require tows to be divided and reassembled when transiting through locks in order not to exceed the 600 foot tow length restriction. This is a minimal constraint on operations since it only limits tow lengths for the short transit time needed to clear locks. The 600 foot limitation has been arrived at following consultation with trade groups and industry representatives who concur that it is reasonable and prudent. Therefore, these requirements are consistent with accepted industry practice, impose minimal financial burdens, and are consistent with the actions of prudent operators under the circumstances. The clarification indicating that assist tugs may not be used when calculating brake horsepower to meet the brake horsepower requirements does not impose additional requirements on industry. It is merely illustrative and clarifies the previous regulation. This rule is deemed to not have a substantial economic impact.

Collection of Information

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

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. (g)(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and record keeping requirements, Safety measures, and Waterways.

Temporary Regulations

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

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 46 CFR 1.46.

2. In § 165.T08–001, paragraphs (b)(1), (b) (6), through (14), and (c) are revised to read as follows:

§ 165.T08–001 Regulated Navigation Area; Lower Mississippi River.

* * * * *

(b) * * *

(1) In accordance with general regulations in § 165.11 of this part, no downbound towboat with tow may operate within the regulated navigation area contrary to this regulation. When calculating towboat brake horsepower limitations, assist tug brake horsepower shall not be included in the calculations in order to meet the minimum requirements.

* * * * *

(6) The length of tows entering or exiting lock forebays shall not exceed 600 feet excluding the length of the towboat.

(7) For purposes of this section, ''chemical barges'' are defined as barges authorized to carry cargoes listed under 46 CFR Part 151 (Subchapter O).

(8) Chemical barges maintained in a fleeting area shall be placed in a protected position within the fleet.

(9) Whenever possible, shifting of chemical barges within a fleeting area shall be limited to daylight hours.

(10) Upbound and downbound tows containing chemical barges shall place them in the most protected position within the tow configuration.

(11) For purposes of this section, ''chemical ships'' are defined as U.S. flagged or foreign-flagged vessels subject to the requirements of 46 CFR Part 153 (Subchapter O).

(12) For purposes of this section, ''gas ships'' are defined as U.S. flagged or foreign-flagged vessels subject to the requirements of 46 CFR Part 154 (Subchapter O).

(13) Downbound chemical or gas ships operating on the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 78 above Head of Passes shall only transit during daylight hours.

(14) The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

* * * * *

(c) Effective dates: This section is effective at 11:00 a.m. on April 4, 1997 and terminates at 12 p.m. on April 20, 1997.

Dated: April 4, 1997.

Timothy W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 97–9410 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI57

Retroactive Payments Due to a Liberalizing Law or VA Issue

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulation regarding retroactive payments of compensation, pension and dependency and indemnity compensation due to a liberalizing law or VA issue. The change is necessary to bring the regulation into conformance with a U.S. Court of Veterans Appeals' decision.

EFFECTIVE DATE: This amendment is effective June 12, 1996.

FOR FURTHER INFORMATION CONTACT: Laurence Freiheit, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7252.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 5110(a) and 38 CFR 3.400, awards of compensation, pension and dependency and indemnity compensation benefits are generally effective on the date VA receives the claim or the date entitlement arose, whichever is later. However, 38 U.S.C. 5110(g) provides an exception: Where benefits are awarded or increased based on a change in law or an administrative issue, benefits are awarded based on facts found but not earlier than the effective date of the law or issue and not more than one year prior to the earlier of the date of application or administrative determination of entitlement. The purpose of section 5110(g) was to provide a one-year grace period, such as that allowed after service discharge or death, for potential beneficiaries who would otherwise be penalized by not filing promptly.

The implementing regulation for section 5110(g) is 38 CFR 3.114. Section 3.114(a) states that the effective date of an award or increase made pursuant to a liberalizing law or VA issue will be made in accordance with facts found but not earlier than the effective date of the law or administrative issue. It goes on to state that, in order for a claimant to be eligible for a retroactive award, the evidence must show that he or she met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or issue and that the eligibility existed continuously from that date to the date of claim or administrative determination of entitlement.

In *McCay* v. *Brown,* 9 Vet. App. 183 (1996), the U.S. Court of Veterans Appeals (the Court) noted that both section 5110(g) and § 3.114(a) are silent as to a liberalizing law or issue with a retroactive effective date. The Court stated that the requirement that the claimant must have met all eligibility criteria on the effective date of the law or issue fulfills the intent of section 5110(g) when the liberalizing law is prospective. However, the Court held that, where the liberalizing law has a retroactive effective date, it is not a permissible construction of section 5110(g) and would result in unequal treatment of claimants. This document amends § 3.114(a) to make it clear that that requirement applies only when liberalizing laws or issues take effect on or after the date of enactment or issuance.

The effective date of this amendment is June 12, 1996, the date of the Court's decision in *McCay* v. *Brown,* 9 Vet. App. 183 (1996).

Since this amendment merely implements a Court decision, the Secretary finds under 5 U.S.C. 553(b) that prior notice and comment are unnecessary and that there is a basis for dispensing with a 30-day delay of the effective date.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612.) Even so, the Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601–612. These amendments are not substantive and do not affect any small entities.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 12, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.114(a) the second sentence is amended by removing ''In order'' and adding, in its place, ''Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant''.

[FR Doc. 97–9445 Filed 4–10–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI29

Vocational Rehabilitation; Miscellaneous Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs vocational rehabilitation regulations. Changes are made to reflect current organizational structure; to decentralize decisionmaking; to update authority citations; to reflect statutory requirements concerning the limit on the amount of money that VA can pay in advance on a work-study contract; and to clarify provisions.

DATES: This final rule is effective April 11, 1997. However, the restatement of statute contained in this final rule will be applied retroactively from the effective date of the statutory provision.

FOR FURTHER INFORMATION CONTACT: Jeff Goetz, Chief of Operations, Vocational Rehabilitation and Counseling Service (28), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 273–7425.

SUPPLEMENTARY INFORMATION: This final rule consists of delegations of authority and nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

As noted in the **SUMMARY** portion of this document, a change is made to reflect statutory requirements concerning the limit on the amount of money that VA can pay in advance on

a work-study contract. Formerly, that limit was 40 percent of the total amount payable under the contract. Now the limit is the lesser of 40 percent of the total amount payable under the contract or 50 times the applicable minimum wage in effect on the date the contract is signed. This amendment to the regulations, set forth in 38 CFR 21.272(e), will be applied from October 29, 1992, the effective date of the statutory change (Pub. L. 102–568).

The Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely consists of delegations of authority and nonsubstantive changes. Pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 64.116)

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 26, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21 is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. The authority citation for part 21, subpart A, is revised to read as follows:

Authority: 38 U.S.C. 501(a), 3100–3121, unless otherwise noted.

2. Section 21.21 is amended by revising the authority citation for paragraph (b) to read as follows:

§ 21.21 Election of benefits under education programs administered by the Department of Veterans Affairs.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3695(b))

3. Section 21.30 is amended by revising the authority citation to read as follows:

§ 21.30 Claims.

* * * * *

(Authority: 38 U.S.C. 501(a), 3102, 3117, 5101(a))

4. Section 21.31 is amended by revising the authority citation to read as follows:

§ 21.31 Informal claim.

* * * * *

(Authority: 38 U.S.C. 501(a), 5101(a), 5103(a))

5. Section 21.32 is amended by revising the authority citation for paragraph (c) to read as follows:

§ 21.32 Time limit.

* * * * *

(c) * * *

(Authority: 38 U.S.C. 5101, 5113)

6. In § 21.35, paragraphs (k)(1) and (k)(2) are amended by removing ''Education Service'' and adding, in its place, ''Counseling Division''; and paragraph (k)(2) is amended by removing ''Vocational Rehabilitation Specialist''; and adding, in its place, ''vocational rehabilitation specialist'; and paragraph (k)(7) is added and the authority citations for paragraphs (a) and (h) are revised, to read as follows:

§ 21.35 Definitions.

(a) * * *

(Authority: 38 U.S.C. 3101(1), 3102)

* * * * *

(h) * * *

(Authority: 38 U.S.C. 3101(8))

* * * * *

(k) * * *

(7) *Vocational rehabilitation counselor.* Unless otherwise stated, the term vocational rehabilitation counselor refers to a vocational rehabilitation counselor in the Vocational Rehabilitation and Counseling Division in the Veterans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))

7. Section 21.41 is amended by revising the authority citation to read as follows:

§ 21.41 Basic period of eligibility.

* * * * *

(Authority: 38 U.S.C. 3103)

8. Section 21.42 is amended by revising the authority citation for paragraph (b) to read as follows:

§ 21.42 Basic period of eligibility deferred.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3103(b)(2))

* * * * *

9. Section 21.50 is amended by revising the authority citation for paragraph (b) to read as follows:

§ 21.50 Initial evaluation.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 523, 3106(a), (d), 3116)

* * * * *

10. In § 21.57, paragraph (c)(1) is amended by removing ''of an'' and adding, in its place, ''or an'' and by adding an authority citation to read as follows:

§ 21.57 Extended evaluation.

* * * * *

(c) * * *

(1) * * *

(Authority: 38 U.S.C. 3106(d))

* * * * *

11. Section 21.72 is amended by revising the authority citations for paragraphs (a) and (c) to read as follows:

§ 21.72 Rehabilitation to the point of employability.

(a) * * *

(Authority: 38 U.S.C. 3101(5), 3104)

* * * * *

(c) * * *

(Authority: 38 U.S.C. 3695(b))

* * * * *

12. In § 21.74, paragraph (c)(2) is amended by adding ''(VR&C)'' before ''Officer''; paragraph (c)(3) is amended by removing ''Director, Vocational Rehabilitation and Education Service'' and adding, in its place, ''VR&C Officer''; and the authority citation for paragraph (a) is revised and an authority citation for paragraph (b) is added, to read as follows:

§ 21.74 Extended evaluation.

(a) * * *

(Authority: 38 U.S.C. 3105(a), 3106(a))

(b) * * *

(Authority: 38 U.S.C. 3105(a))

* * * * *

13. Section 21.80 is amended by revising the authority citation for paragraph (d) to read as follows:

§ 21.80 Requirement for a rehabilitation plan.

* * * * *

(d) * * *

(Authority: 38 U.S.C. 523, 7722(c))

14. Section 21.86 is amended by revising the authority citations for paragraphs (a) and (b) to read as follows:

§ 21.86 Individualized extended evaluation plan.

(a) * * *

(Authority: 38 U.S.C. 3106(a), 3107(a))

(b) * * *

(Authority: 38 U.S.C. 3106(a), 3107(a))

15. Section 21.90 is amended by revising the section heading and the authority citation for paragraph (a) to read as follows:

§ 21.90 Individualized independent living plan.

(a) * * *

(Authority: 38 U.S.C. 3109, 3120)

* * * * *

16. Section 21.94 is amended by revising the authority citation for paragraph (a) to read as follows:

§ 21.94 Changing the plan.

(a) * * *

(Authority: 38 U.S.C. 3107(b))

* * * * *

§ 21.98 [Amended]

17. In § 21.98, the heading of paragraph (c) is amended by removing ''Vocational Rehabilitation and Education Service'' and adding, in its place, ''Director, Vocational Rehabilitation and Counseling Service''; and paragraph (c) in the first sentence and paragraph (d) are amended by removing ''Vocational Rehabilitation and Education Service'' and adding, in its place, ''VR&C'' and by removing ''Vocational Rehabilitation and Counseling'' and adding, in its place, ''VR&C''.

18. In § 21.100, paragraph (a) introductory text is amended by removing ''VR&E (Vocational Rehabilitation and Education)'' and adding, in its place, ''Vocational Rehabilitation and Counseling (VR&C)''; paragraph (d)(1) is amended by removing ''Education'' and adding, in its place, ''Counseling''; paragraphs (d)(1), (d)(2) introductory text, and (d)(3)(ii) are amended by removing ''VR&E'' and adding, in its place, ''VR&C''; paragraph (d)(4) is amended by removing ''VR&E'' and adding, in its place, ''a counseling psychologist in the VR&C Division''; and the authority citations for paragraphs (b), (d), and (e) are revised to read as follows:

§ 21.100 Counseling.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3104(a)(2))

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3118(c))

(e) * * *

(Authority: 38 U.S.C. 101(20))

19. Section 21.120 is amended by revising the authority citation for paragraph (c) to read as follows:

§ 21.120 Educational and vocational training services.

* * * * *

(c) * * *

(Authority: 38 U.S.C. 3104(a)(7), 3115(a))

20. Section 21.122 is amended by revising the authority citation for paragraph (a) to read as follows:

§ 21.122 School course.

(a) * * *

(Authority: 38 U.S.C. 501(a), 3104)

* * * * *

21. Section 21.123 is amended by removing the authority citation for paragraph (a) and by revising the authority citation at the end of the section to read as follows:

§ 21.123 On-job course.

* * * * *

(Authority: 38 U.S.C. 501(a), 3104)

22. Section 21.134 is amended by revising the authority citation to read as follows:

§ 21.134 Limitation on flight training.

* * * * *

(Authority: 38 U.S.C. 3680A(b))

23. Section 21.140 is amended by revising the authority citation for paragraph (d) to read as follows:

§ 21.140 Evaluation and improvement of rehabilitation potential.

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3104(a)(1), (6), (9), (10), (15))

24. Section 21.148 is amended by revising the authority citation for paragraph (d) to read as follows:

§ 21.148 Tutorial assistance.

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3108(f))

§ 21.155 [Amended]

25. In § 21.155, paragraph (d)(1) is amended by removing ''VHS&RA (Veterans Health Services and Research Administration)'' and adding, in its place, ''Veterans Health Administration (VHA)''; and paragraph (d)(2) is amended by removing ''VHS&RA'' and adding, in its place, ''VHA''.

26. Section 21.160 is amended by revising the authority citations for paragraphs (a), (c), (d), and (e) to read as follows:

§ 21.160 Independent living services.

(a) * * *

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

* * * * *

(c) * * *

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(d) * * *

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(e) * * *

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3115, 3120)

27. In § 21.162, paragraph (b)(1) is amended by adding ''and'' at the end of the paragraph; paragraph (b)(2) is amended by removing ''homes:'' and adding, in its place, ''homes.''; paragraphs (b)(3) and (b)(4) are removed; and paragraph (a)(4), the authority citation for paragraph (a), paragraph (b) heading and introductory text, and the authority citation for paragraph (b) are revised to read as follows:

§ 21.162 Participation in a program of independent living services.

* * * * *

(a) * * *

(4) The VR&C Officer concurs in the IILP.

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(b) *Considerations for the VR&C Officer.* The VR&C Officer will consider the following factors in administering programs providing independent living services:

* * * * *

(Authority: 38 U.S.C. 3120(c))

28. Section 21.180 is amended by revising the last sentence in paragraph (c) to read as follows:

§ 21.180 Case status system.

* * * * *

(c) *Case manager.* * * * When securing medical care, treatment, and other related services, the VR&C case manager will coordinate with Veterans Health Administration (VHA) staff members who have case management responsibility for the veteran.

* * * * *

§ 21.222 [Amended]

29. In § 21.222, paragraph (c)(3) is amended by removing ''VR&E'' and adding, in its place, ''VR&C''.

30. Section 21.252 is amended by revising paragraph (a)(2)(iii) and the authority citation for paragraph (a) to read as follows:

§ 21.252 Job development and placement services.

(a) * * *

(2) * * *

(iii) The State Employment Services and the Veterans' Employment and Training Service of the United States Department of Labor;

* * * * *

(Authority: 38 U.S.C. 3117(a)(2))

* * * * *

31. In § 21.254, paragraph (c) introductory text is amended by removing ''met;'' and adding, in its place, ''met:''; and the authority citation for paragraph (b) is revised to read as follows:

§ 21.254 Supportive services.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3104(a), 3108(f))

* * * * *

32. In § 21.256, paragraph (d) is amended by removing ''Director, VR&E Service,'' and adding, in its place, ''VR&C Officer''; and by revising the authority citation following paragraph (e) to read as follows:

§ 21.256 Incentives for employers.

* * * * *

(Authority: 38 U.S.C. 3108(f), 3116(b))

* * * * *

33. In § 21.260, the section heading is revised and the authority citations for paragraphs (a) and (b) are revised to read as follows:

§ 21.260 Subsistence allowance.

(a) * * *

(Authority: 38 U.S.C. 3108(a) and (f))

(b) * * *

(Authority: 38 U.S.C. 3108)

* * * * *

34. Section 21.264 is amended by revising the section heading and the authority citations for paragraphs (a), (b), (c), and (d) to read as follows:

§ 21.264 Election of payment at the 38 U.S.C. chapter 30 educational assistance rate.

(a) * * *

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(b) * * *

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(c) * * *

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(d) * * *

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

35. Section 21.268 is amended by revising the authority citation for paragraph (b) to read as follows:

§ 21.268 Employment adjustment allowance.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3108(f))

* * * * *

36. In § 21.272, paragraph (e), the authority citations for paragraphs (a), (b), and (f), and the authority citation following paragraph (d) are revised to read as follows:

§ 21.272 Veteran-student services.

(a) * * *

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(b) * * *

(Authority: 38 U.S.C. 3104(a)(4), 3108(f), 3485)

* * * * *

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(e) *Payment in advance.* VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract (but not more than an amount equal to 50 times the applicable hourly minimum wage).

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(f) * * *

(Authority: 38 U.S.C. 3104(a)(4), 3485)

* * * * *

37. Section 21.276 is amended by revising the authority citation for paragraph (g) to read as follows:

§ 21.276 Incarcerated veterans.

* * * * *

(g) * * *

(Authority: 38 U.S.C. 3108(f), 3680(a))

* * * * *

38. In § 21.292, paragraph (d) is amended by removing ''VR&E'' and adding, in its place, ''VR&C'; and paragraph (e) is revised to read as follows:

§ 21.292 Course approvals.

* * * * *

(e) *Course disapproved.* The VR&C Officer may approve for 38 U.S.C. chapter 31 use courses that one of the agencies in paragraph (c) of this section has disapproved.

(Authority: 38 U.S.C. 3115)

39. In § 21.294, paragraph (c) is amended by removing ''VHS&RA'' and adding, in its place, ''VHA''; and paragraphs (b)(2)(i), (b)(3)(i), and (b)(3)(ii) and the authority citations for paragraphs (b) and (c) are revised to read as follows:

§ 21.294 Selecting the training or rehabilitation facility.

* * * * *

(b) * * *

(2) * * *

(i) Veterans Health Administration (VHA) facilities that provide independent living services;

* * * * *

(3) * * *

(i) Are not available through public or nonprofit agencies or VHA; or

(ii) Cannot be obtained cost-effectively from public or nonprofit agencies or VHA.

* * * * *

(Authority: 38 U.S.C. 3115, 3120)

(c) * * *

(Authority: 38 U.S.C. 3115)

* * * * *

40. Section 21.320 is amended by revising the authority citation following paragraph (b) and the authority citation for paragraph (d) to read as follows:

§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.

* * * * *

(Authority: 38 U.S.C. 3108 (a) and (f))

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3108 (a) and (f))

41. Section 21.324 is amended by revising the authority citation for paragraph (i) to read as follows:

§ 21.324 Reduction or termination dates of subsistence allowance.

* * * * *

(i) * * *

(Authority: 38 U.S.C. 3680(a))

* * * * *

42. Section 21.330 is amended by revising the authority citation for paragraph (a) to read as follows:

§ 21.330 Apportionment.

(a) * * *

(Authority: 38 U.S.C. 5307(c))

* * * * *

43. Section 21.334 is amended by revising the section heading and the authority citations for paragraphs (b), (c), and (d) to read as follows:

§ 21.334 Election of payment at the chapter 30 rate.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3108(f))

(c) * * *

(Authority: 38 U.S.C. 3108(f))

(d) * * *

(Authority: 38 U.S.C. 3108(f))

* * * * *

44. Section 21.342 is amended by revising the authority citation to read as follows:

§ 21.342 Leave accounting policy.

* * * * *

(Authority: 38 U.S.C. 3110)

45. Section 21.344 is amended by revising the authority citation to read as follows:

§ 21.344 Facility offering training or rehabilitation services.

* * * * *

(Authority: 38 U.S.C. 3110)

46. Section 21.390 is amended by revising paragraph (c) to read as follows:

§ 21.390 Rehabilitation research and special projects.

* * * * *

(c) *Research by Vocational Rehabilitation and Counseling (VR&C) staff members.* VA will encourage research by VR&C staff members. This research will address problems affecting service delivery, initiation and continuation in rehabilitation programs, and other areas directly affecting the quality of VR&C services to veterans.

(Authority: 38 U.S.C. 3119(a))

* * * * *

47. Section 21.410 is revised to read as follows:

§ 21.410 Delegation of authority.

The Secretary delegates authority to the Under Secretary for Benefits to make findings and decisions under 38 U.S.C. chapter 31 and regulations, precedents, and instructions that affect vocational rehabilitation services for disabled veterans. The Under Secretary for Benefits may further delegate this authority to supervisory and non-supervisory Vocational Rehabilitation and Counseling staff members.

(Authority: 38 U.S.C. 512(a))

48. In § 21.430, paragraph (c) is amended by revising the heading and introductory text; and the authority citation is revised to read as follows:

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

* * * * *

(c) *Vocational Rehabilitation and Counseling (VR&C) Officer's review of program costs.* The VR&C Officer will review the program costs for the services in paragraphs (c)(1) through (c)(3) of this section if the case manager's program cost estimate for a calendar year exceeds $25,000. The VR&C Officer may not delegate this responsibility. The case manager will neither sign a rehabilitation plan nor authorize expenditures before the VR&C Officer approves the program costs. The services subject to this review are:

* * * * *

(Authority: 38 U.S.C. 3115(b)(4))

[FR Doc. 97–9022 Filed 4–10–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300474; FRL–5600–5]

RIN 2070–AB78

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the pesticide propiconazole in or on the raw agricultural commodities almonds and cranberries in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of propiconazole on almonds in California and cranberries in Wisconsin. This regulation establishes maximum permissible levels for residues of propiconazole 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.

DATES: This regulation becomes effective April 11, 1997. Objections and requests for hearings must be received by EPA on or before June 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300474], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300474], 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. Such 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–300474]. 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: Olga Odiott, 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) 308-6418, e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, 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 the pesticide propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole) in or on almond nutmeats at 0.1 part per million (ppm), in or on almond hulls at 2.5 ppm, and in or on cranberries at 1.0 ppm.

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) 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 Propiconazole on Almonds and on Cranberries and FFDCA Tolerances

The California EPA Department of Pesticide Regulation availed itself of the authority to declare the existence of a crisis situation within the state on February 3, 1997, thereby authorizing use under FIFRA Section 18 of propiconazole on almonds to control anthracnose (*Colletotrichum acutatum*). California has also requested a specific exemption for this use of propiconazole. California stated that an emergency situation was present due to persistent and extended periods of rainfall during 1991 to 1995, which caused anthracnose levels to reach epidemic proportions in the northern and central almond growing areas of the state. California also stated that the causal organism is relatively insensitive to registered pesticides and that significant production and revenue losses are expected to occur without the availability of propiconazole. After having reviewed their submission, EPA concurs that an emergency condition exists.

The Wisconsin Department of Agriculture, Trade and Consumer Protection have requested a specific exemption for the use of propiconazole on cranberries to control cottonball disease. Production and distribution of triforine (Funginex), the only fungicide registered for control of cottonball disease, has been discontinued by its manufacturer. Most growers depleted their supplies of Funginex during the 1996 growing season. Wisconsin states that the lack of a fungicide to control cottonball disease can have devastating effects on cranberry growers' production and revenue. After having reviewed their submission, EPA concurs that an emergency condition exists.

As part of its assessment, EPA assessed the potential risks presented by residues of propiconazole in or on almonds nutmeats, in or on almond hulls, and in or on cranberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding 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 propiconazole will permit the marketing of almonds and cranberries treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions 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 for in section 408(l)(6). Although these tolerances will expire as intended in the table, under FFDCA section 408(l)(5), residues of propiconazole not in excess of the amount specified in the tolerances remaining in or on almonds 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 exemption. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether propiconazole meets the requirements for registration under FIFRA section 3 for use on almonds and cranberries, or whether permanent tolerances for propiconazole for these commodities would be appropriate. This action by EPA does not serve as a basis for registration of propiconazole by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than California and Wisconsin to use this product on these crops 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 propiconazole, 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 by EPA to pose a reasonable certainty of no harm.

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 relationships. 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 Assessments, Cumulative Risk Discussion, and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Propiconazole is registered by EPA for use on pecans for control of scab, and on stone fruits for control of brown rot. At this time EPA is not in possession of a registration application for propiconazole on almonds or on cranberries. However, based on information submitted to the Agency, EPA has sufficient data to assess the hazards of propiconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of propiconazole in or on almond nutmeats at 0.1 part per million (ppm), in or on almond hulls at 2.5 ppm, and in or on cranberries at 1.0 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, the Office of Pesticide Programs (OPP) has established the RfD for propiconazole at 0.013 mg/kg/day. The RfD is based on a one-year feeding study in dogs with a NOEL of 1.25 mg/kg/day and an uncertainty factor (UF) of 100. The lowest effect level (LEL) of 6.25 mg/kg/day was based on mild irritation of the gastric mucosa.

2. *Acute toxicity.* Based on the available acute toxicity data, OPP has determined that the NOEL of 30 mg/kg/day from a developmental toxicity study in rats should be used to assess risks from acute toxicity. The developmental LEL of 90 mg/kg/day was based on the increased incidence of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae. This risk assessment evaluates acute dietary risk to females 13+ years.

3. *Short- and intermediate-term toxicity.* Based on the available data, OPP has determined that a NOEL of 30 mg/kg/day from a developmental toxicity study in rats should be used to assess risks from short- and intermediate-term dermal toxicity. At the developmental LEL of 90 mg/kg/day, there were increased incidences of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae. For short- and intermediate-term inhalation toxicity, OPP has determined that a NOEL of 92.8 mg/kg/day (0.5 mg/L), the highest dose tested from a 5-day inhalation toxicity study in rats should be used to assess risks for occupational and residential exposure scenarios.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified propiconazole as a Group C, ''possible human carcinogen'', chemical. The OPP Carcinogenicity Peer Review Committee (CPRC) recommended using the RfD approach for quantification of human risk.

B. Aggregate Exposure

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).

Tolerances have been established (40 CFR 180.434) for the combined residues of propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-trizole) and its metabolites determined as 2,4-dichlorobenzoic acid (DCBA) and expressed as parent compound, in or on certain raw agricultural commodities ranging from 0.05 ppm in milk to 60 ppm in grass (seed screenings). For purposes of these Section 18 uses, the nature of the residue in plants and animals is adequately understood. Almond hulls (proposed tolerance, 2.5 ppm) is not fed to poultry or swine, but can be fed up to 10% of the diet of beef and dairy cattle. This is a negligible contribution, comparatively speaking, and is not expected to increase the daily dietary burden to livestock. Secondary residues in animal commodities are not expected to exceed existing tolerances as a result of these Section 18 uses.

1. *Chronic exposure.* Given the emergency nature of these requests for the use of propiconazole and the

resulting need for a timely analysis and risk assessment, the chronic dietary (food only) risk assessment was partially refined using anticipated residue levels and percent crop-treated values for selected commodities. Further refinement using anticipated residue levels and percent crop-treated values for all commodities would result in lower dietary exposure estimates.

Based on available studies used in EPA's assessment of environmental risk, propiconazole is soluble in water but relatively immobile in most soils and fairly persistent in the environment. No Maximum Concentration Level has been established for residues of propiconazole in drinking water. No Health Advisory Levels for propiconazole in drinking water have been established.

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 propiconazole 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 propiconazole 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.

Propiconazole is registered for residential usage as a preservative for finished wood (fences, window moldings) and for ornamental turf/lawns. Lawn care usage data available to the Agency indicates that there is no reported usage of propiconazole products by homeowners. Two sources reported usage by lawn care operators and landscapers. Based on acres treated information, between 3,850 to 6,725 households are estimated to be potentially treated with propiconazole. This represents between 0.004% to 0.007% of all households nationally.

Based on the nature of the outdoor and indoor residential uses of propiconazole, OPP has concluded that a chronic residential exposure scenario does not exist for outdoor residential use. A chronic residential exposure scenario may exist for indoor residential use. The indoor residential use (window moldings) will be assumed to account for 5% of the total aggregate chronic risk until additional data are provided. This value is considered conservative and protective of the public health. The aggregate chronic risk is equal to the sum of the chronic risk from food + water + residential (indoor and outdoor) uses. In the best scientific judgment of OPP, this aggregate chronic risk for propiconazole does not exceed our level of concern.

2. *Acute exposure.* The acute dietary (food only) risk assessment used tolerance level residues and 100% crop-treated information. Thus, the acute dietary risk estimate is an over-estimate of exposure and it is considered to be protective of any acute exposure scenario.

In the best scientific judgment of OPP, the aggregate acute risk (food and water) from the currently registered, and this proposed Section 18 uses of propiconazole, do not exceed our level of concern. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the potential exposures associated with propiconazole 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 from acute aggregate exposure.

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

Considering the nature of the outdoor residential uses, OPP has concluded that a short- to intermediate-term outdoor residential exposure scenario could exist. The contribution from indoor residential inhalation exposure resulting from propiconazole-treated window moldings to the short- and intermediate-term aggregate risk would be negligible, and has not been included in this risk characterization. The chronic food and water exposure estimates for the aggregate short- and intermediate-term risk assessments are considered conservative for the reasons mentioned above.

In the absence of data, and until further data are provided, risks from residential uses will be assumed to account for 10% (5% each for outdoor and indoor residential usage) of the total allowable aggregate short- and intermediate-term risk. OPP considers this estimate of total aggregate short- and intermediate-term exposure as conservative and protective of the public health. In the best scientific judgment of OPP, the shortand intermediate-term aggregate risks from the currently registered, and the proposed Section 18 uses of propiconazole, do not exceed our level of concern.

4. *Cancer risk.* Based on the OPP Carcinogenicity Peer Review Committee's (CPRC) recommendation that the RfD approach be used to assess cancer risk, a quantitative cancer risk assessment was not performed. Human health risk concerns due to long-term exposure to propiconazole residues are adequately addressed by the aggregate chronic exposure analysis using the RfD.

C. Cumulative Exposure to Substances with Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' 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 propiconazole 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, propiconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action EPA has not assumed that propiconazole has a common mechanism of toxicity with other substances.

D. Determination of Safety for U.S. Population

1. *Chronic risk.* Using the conservative exposure assumptions described above, taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to propiconazole will utilize 6% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to propiconazole from drinking water and indoor uses, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propiconazole residues.

2. *Acute risk.* For the population subgroup of concern, females 13+ years (accounts for both maternal and fetal exposure), the calculated Margins of Exposure (MOE) value is 3,000. This MOE value does not exceed the Agency's level of concern for acute dietary exposure. Despite the potential for exposure to propiconazole from drinking water EPA concludes that the aggregate acute risk from the currently registered uses of propiconazole does not exceed the Agency's level of concern.

3. *Short- and intermediate-term risk.* For propiconazole, EPA does not have concerns for short- and intermediate-term dietary exposure because of the very high values calculated for the MOE. The calculated MOE value is 37,000 for the U.S. population. Despite the potential for exposure to propiconazole from drinking water EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propiconazole residues.

E. Determination of Safety for Infants and Children

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

The developmental toxicity NOELs were 30 mg/kg/day in rats and 400 mg/kg/day (HDT) in rabbits. Developmental toxicity was observed in rats at 90 mg/kg/day; these effects occurred in the presence of maternal toxicity. In rabbits, no developmental delays or alterations were noted; however, increased abortions were observed at the maternally toxic dose of 400 mg/kg/day. The developmental NOELs are more than 24- and 320-fold higher in rats and rabbits, respectively, than the NOEL of 1.25 mg/kg/day from the 1-year feeding study in dogs, which is the basis of the RfD. In the two-generation reproductive toxicity study in rats, the reproductive (pup) toxicity NOEL of 25 mg/kg/day was greater than the parental (systemic) toxicity NOEL (<5 mg/kg/day; LDT). The NOEL of 25 mg/kg/day for reproductive (pup) toxicity was 20-fold higher than the NOEL of 1.25 mg/kg/day from the 1-year feeding study in dogs, which is the basis of the RfD. The reproductive (pup) LEL of 125 mg/kg/day was based on decreased offspring survival of second generation (F2) pups, and on decreased body weight throughout lactation, and an increase in the incidence of hepatic cellular swelling for both generations of offspring (F1 and F2 pups). Because these reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest increased pre- or post-natal sensitivity to infants and children (that infants and children might be more sensitive than adults) to propiconazole exposure.

1. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that the percent of the RfD that will be utilized by exposure to residues of propiconazole ranges from 8% for children 7 - 12 years old, up to 20% for non-nursing infants (the most highly exposed population subgroup). Despite the potential for exposure to propiconazole from drinking water and indoor uses, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to propiconazole residues.

2. *Acute risk.* For the population subgroup of concern, females 13+ years, an MOE value of 3,000 was calculated using the high end exposure value of 0.01 mg/kg/day. Tolerance level residues and 100% crop-treated information were used in conducting the analysis. Thus, this acute dietary risk estimate is considered conservative. The large acute dietary MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm from aggregate exposures to females 13+ years and the pre-natal development of infants.

3. *Short- and intermediate-term risk.* For the most highly exposed population subgroup (non-nursing infants less than 1 year old), a short- and intermediate-term MOE of 12,000 was calculated. The large MOE calculated for non- nursing infants provides assurance that there is a reasonable certainty of no harm for infants and children from short- and intermediate-term aggregate exposures to propiconazole residues.

FFDCA section 408 provides that EPA shall apply an additional tenfold 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 database 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 tenfold 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 database for propiconazole relative to pre- (provided by rat and rabbit developmental studies) and post-natal (provided by the rat reproduction study) toxicity is complete.

Further, as noted above, the acute dietary MOE for children 13+ years is 3,000. This large MOE demonstrates that the prenatal exposure to infants is not a toxicological concern at this time, and the additional uncertainty factor is not needed to protect the safety of infants and children.

The acute dietary risk assessment used tolerance level residues and 100% crop-treated information. Further refinement using anticipated residue levels and percent crop-treated values would result in a lower dietary exposure estimate.

The chronic dietary risk assessment was partially refined using anticipated residue levels and percent crop-treated values for selected commodities. This risk estimate should be viewed as conservative; further refinement using anticipated residue levels and percent crop-treated values for all commodities included in the analysis would result in lower dietary exposure estimates. Therefore, EPA concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to propiconazole residues.

V. Other Considerations

The metabolism of propiconazole in plants and animals is adequately understood for the purposes of these tolerance actions. There is a Codex maximum residue level (MRL) of 0.05 ppm for residues of propiconazole in/on almonds. The Section 18 tolerance on almond nut meats is proposed at 0.1 ppm and that on almond hulls at 2.5 ppm. The available field trial data on almonds do not support harmonization with the Codex MRL of 0.05 ppm because they indicate that residues used under the use patterns approved for the emergency exemption could exceed 0.05 ppm. There are no Canadian or Mexican levels established for residues of propiconazole on almonds. There are no Mexican, Canadian, or Codex MRLs established for residues of propiconazole on cranberries. There are practical analytical methods for detecting and measuring levels of propiconazole in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on these method to FDA. These methods have been approved for publication in PAM II for enforcement purposes, but have not yet appeared in PAM II. In the interim, a copy of the methods 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, 703-305-5805.

VI. Conclusion

Therefore, time-limited tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of propiconazole in or on almond nutmeats at 0.1 part per million (ppm), in or on almond hulls at 2.5 ppm and in on or cranberries at 1.0 ppm.

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 10, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300474]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 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 tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as 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 Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated:April 4, 1997.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. By revising § 180.434 to read as follows:

§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on the following commodities:

Commodity	Parts per million	Expiration Date
Apricots	1.0	None
Bananas	0.2	None
Barley, grain	0.1	None
Barley, straw	1.5	None
Cattle, fat	0.1	None
Cattle, kidney	2.0	None
Cattle, liver	2.0	None
Cattle, mbyp (except kidney and liver)	0.1	None
Cattle, meat	0.1	None
Celery	5.0	None
Corn, fodder	12	December 31, 1998
Corn, forage	12	December 31, 1998
Corn, grain	0.1	December 31, 1998
Corn, sweet (kernels, plus cobs with husks removed)	0.1	December 31, 1998
Eggs	0.1	None
Goats, fat	0.1	None
Goats, kidney	2.0	None
Goats, liver	2.0	None
Goats, mbyp (except kidney and liver)	0.1	None
Goats, meat	0.1	None
Grass, forage	0.5	None
Grass, hay (straw)	40	None
Grass, seed screenings	60	None
Hogs, fat	0.1	None
Hogs, kidney	2.0	None
Hogs, liver	2.0	None
Hogs, mbyp (except kidney and liver)	0.1	None
Hogs meat	0.1	None
Horses, fat	0.1	None
Horses, kidney	2.0	None
Horses, liver	2.0	None
Horses, mbyp (except kidney and liver)	0.1	None
Horses, meat	0.1	None
Milk	0.05	None
Mushrooms	0.1	None
Nectarines	1.0	None
Oats, forage	10.0	None
Oats, grain	0.1	None
Oats, hay	30.0	None
Oats, straw	1.0	None
Peaches	1.0	None
Peanuts	0.2	December 31, 1998
Peanuts, hay	20.0	December 31, 1998
Peanuts, hulls	1.0	December 31, 1998
Pecans	0.1	None
Pineapple	0.1	December 31, 1998
Pineapple, fodder	0.1	December 31, 1998
Plums	1.0	None
Poultry, fat	0.1	None
Poultry, kidney	0.2	None
Poultry, liver	0.2	None
Poultry, mbyp (except kidney and liver)	0.1	None
Poultry, meat	0.1	None
Prunes, fresh	1.0	None
Rice, grain	0.1	None
Rice, straw	3.0	None
Rye, grain	0.1	None
Rye, straw	1.5	None
Sheep, fat	0.1	None
Sheep, kidney	2.0	None
Sheep, liver	2.0	None
Sheep, mbyp (except kidney and liver)	0.1	None
Sheep, meat	0.1	None
Stonefruit group	1.0	None
Wheat, grain	0.1	None
Wheat, straw	1.5	None

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established permitting the combined residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA.

Residues in these commodities not in excess of the established tolerances resulting from the uses described in this paragraph remaining after expiration of the time-limited tolerances will not be considered to be actionable if the pesticide is applied during the term of and in accordance with the provisions of this paragraph. The tolerances are specified in the following table. These tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration/ Revocation Date
Almond hull ...	2.5	July 31, 1998
Almond nut meats	0.1	July 31, 1998
Cranberries ...	41.0	July 31, 1998
Grain sorghum	0.1	October 31, 1998
Grain sorghum stover	1.5	October 31, 1998

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(n), is established for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the following commodities:

Commodity	Parts per million
Mint, tops (leaves and stems) ..	0.3
Wild rice	0.5

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

[FR Doc. 97–9371 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300463; FRL–5597–3]

RIN No. 2070–AB78

Phosphinothricin Acetyltransferase and the Genetic Material Necessary for Its Production in All Plants; Exemption From the Requirement of a Tolerance On All Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the plant-pesticide inert ingredients Phosphinothricin Acetyltransferase (PAT) and the genetic material necessary for its production in all plants when used as plant-pesticides in or on all raw agricultural commodities (RACs). Dekalb Genetics Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of l996 (FQPA) requesting the exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of this plant-pesticides in or on all RACS.

EFFECTIVE DATE: This regulation becomes effective on April 11, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300463], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway., Arlington, VA. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300463]. No Confidential Business Information (CBI) should be submitted through e- mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VIII. of this preamble.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor CS, 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8715); email: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 24, 1996 (62 FR 3682)(FRL–5380–2), EPA issued a notice pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d) announcing the filing of a pesticide petition for an exemption from the requirement for a tolerance by Dekalb Genetics Corporation (Dekalb), 3100 Sycamore Road, Dekalb, IL 60115. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the FQPA (Pub. L. 104–170). The petition requested that an exemption from the requirement of a tolerance be established for the plant-pesticides PAT and the genetic material necessary for its production in plants in or on all raw agricultural commodities (RACS). There were no comments or requests for referral to an advisory committee received in response to the notice of filing. The data submitted in the petition and other relevant material have been evaluated. The toxicology and other data listed below were considered in support of this exemption from the requirement of a tolerance.

I. Toxicological Profile

The data submitted regarding potential health effects of PAT include information on the characterization of the expressed protein in corn, the acute oral toxicity of PAT, and *in vitro* digestibility studies of the protein. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered.

The acute oral toxicity test of bacterially-derived PAT protein showed no test substance related deaths at a dose of 2,500 milligrams per kilogram (mg/kg). Residue chemistry data were not required for a human health effects assessment of the subject plant-pesticide inert ingredients because of the lack of mammalian toxicity. Both (1) available information concerning the dietary

consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children) and (2) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated because the lack of mammalian toxicity at high levels of exposure demonstrate the safety of the product at levels above possible maximum exposure levels. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis*. [See 40 CFR 158.740(b).] For microbial products, further toxicity testing to verify the observed effects and clarify the source of the effects (Tiers II and III) and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study.

The acute oral toxicity data submitted support the prediction that the PAT protein would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992)]. Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the PAT delta-endotoxin protein is not considered toxic.

Adequate information was submitted to show that the PAT test material derived from microbial cultures was biochemically and, functionally similar to the proteins produced by the plant-pesticide inert ingredient in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing. In addition, the *in vitro* digestibility studies indicate the proteins would be rapidly degraded following ingestion.

The genetic material necessary for the production of the plant-pesticides active and inert ingredients are the nucleic acids (DNA) which comprise (1) genetic material encoding these proteins and (2) their regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the proteins, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids as they appear in the subject plant-pesticide inert ingredient has been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject active and inert plant pesticidal ingredients.

II. Sensitivity of Subgroups

The Agency has considered available information on the variability of the sensitivities of major identifiable subgroups of consumers including infants and children and the physiological differences between infants and children and adults and effects of *in utero* exposure to the plant-pesticides. Since PAT is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, are glycosylated and are present at high concentrations in the food. Data has been submitted which demonstrate that the PAT protein is rapidly degraded by gastric fluid *in vitro* and is non-glycosylated. Thus, the potential for the PAT protein to be a food allergen is minimal.

III. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mode of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-pesticides, there are no cumulative effects.

IV. Aggregate Exposures

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-pesticides chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-pesticides are contained within plant cells which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed corn products and drinking water. However a lack of mammalian toxicity and the digestibility of the plant-pesticides has been demonstrated. At present, the use sites for PAT are all agricultural. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold 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 database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. In this instance EPA believes there is reliable data to support the conclusion that the plant-pesticides are not toxic to mammals, including infants and children, and thus there are no threshold effects of concern. As a result, the provision requiring an additional margin of exposure does not apply.

V. Endocrine Effects

EPA does not have any information regarding endocrine effects for these kinds of pesticides at this time. The Agency is not requiring information on the endocrine effects of these plant-pesticides at this time; and Congress allowed 3 years after August 3, 1996, for the Agency to implement a screening and testing program with respect to endocrine effects.

VI. Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U. S. population, including infants and children, to the PAT protein and the genetic material necessary for its production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-pesticides. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA section 408(j)(3) for PAT and the genetic material necessary for its production in all plants.

Phosphinothiricin Acetyltransferase (PAT) and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant-pesticide inert ingredients in all plant raw agricultural commodities. ''Genetic material necessary for its production'' means the genetic material which comprise (1) genetic material encoding the PAT protein and (2) its regulatory regions. ''Regulatory regions'' are the genetic material that control the

expression of the genetic material encoding the PAT protein, such as promoters, terminators, and enhancers.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law. 0

Any person may, by June 10, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300463]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in ADDRESSES at the beginning of this document.

IX. Regulatory Assessment Requirements

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

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

Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 25, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1151 is revised to read as follows:

§ 180.1151 Phosphinothricin Acetyltransferase (PAT) and the genetic material necessary for its production all plants; exemption from the requirement of a tolerance.

Phosphinothricin Acetyltransferase (PAT) and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant-pesticide inert ingredients in all plant raw agricultural commodities. ''Genetic material necessary for its production'' means the genetic material which comprise genetic material encoding the PAT protein and its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the PAT protein, such as promoters, terminators, and enhancers.

§ 180.1175 [Removed]

3. Section 180.1175 is removed.

[FR Doc. 97–9373 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300462; FRL–5596–7]

RIN 2070–AB78

Bacillus Thuringiensis Subspecies Kurstaki CryIA(c) and the Genetic Material Necessary for Its Production in All Plants; Exemption From the Requirement of a Tolerance on All Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the plant-pesticides CryIA(c) and the genetic material necessary for its production in all plants when used as plant-pesticides in or on all raw agricultural commodities. Dekalb Genetics Corporation submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of l996 requesting the exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of this plant-pesticides in or on all raw agricultural commodities.

EFFECTIVE DATE: This regulation becomes effective on April 11, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300462], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300462]. No Confidential Business Information (CBI) should be submitted through e- mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VIII. of this preamble.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8715); email: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 24, 1997 (62 FR 3682)(FRL–5380–2), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) announcing the filing of a pesticide petition for an exemption from the requirement of a tolerance by Dekalb Genetics Corporation (Dekalb), 3100 Sycamore Road, Dekalb, IL 60115. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (Pub. L. 104–170). The petition requested that an exemption from the requirement of a tolerance be established for the plant-pesticides *Bacillus thuringiensis* subspecies *kurstaki* CryIA(c) [CryIA(c)] and the genetic material necessary for its production in plants in or on all raw agricultural commodities (RACS). There were no comments or requests for referral to an advisory committee received in response to the notices of filing. The data submitted in the petition and other relevant material have been evaluated. The toxicology and other data listed below were considered in support of this exemption from the requirement of a tolerance.

I. Toxicological Profile

The data submitted regarding potential health effects of CryIA(c) include information on the characterization of the expressed protein in corn, the acute oral toxicity of CryIA(c), and *in vitro* digestibility studies of the protein. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered. The acute oral toxicity test of bacterially-derived CryIA(c) protein showed no test substance related deaths at a dose of 5,000 mg/kg. Although CryIA(c) expression level data were required for an environmental fate and effects assessment, residue chemistry data were not required for a human health effects assessment of the subject plant-pesticides ingredients because of the lack of mammalian toxicity. Both (1) available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children) and (2) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated because the lack of mammalian toxicity at high levels of exposure demonstrate the safety of the product at levels above possible maximum exposure levels. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which these plant-pesticides are derived. [See 40 CFR 158.740(b).] For microbial products, further toxicity testing to verify the observed effects and clarify the source of the effects (Tiers II and III) and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study.

The acute oral toxicity data submitted support the prediction that the CryIA(c) protein would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3–9 (1992)]. Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose

levels, the CryIA(c) delta-endotoxin protein is not considered toxic.

Adequate information was submitted to show that the CryIA(c) test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-pesticide ingredient in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing. In addition, the *in vitro* digestibility studies indicate the proteins would be rapidly degraded following ingestion.

The genetic material necessary for the production of the plant-pesticides active and inert ingredients are the nucleic acids (DNA) which comprise (1) genetic material encoding these proteins and (2) their regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the proteins, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids as they appear in the subject active ingredients has been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject active and inert plant pesticidal ingredients.

II. Sensitivity of Subgroups

The Agency has considered available information on the variability of the sensitivities of major identifiable subgroups of consumers including infants and children and the physiological differences between infants and children and adults and effects of *in utero* exposure to the plant-pesticides. Since CryIA(c) is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, are glycosylated and present at high concentrations in the food. Data has been submitted which demonstrate that the CryIA(c) delta-endotoxin is rapidly degraded by gastric fluid *in vitro* and is non-glycosylated. Studies submitted to EPA done in laboratory animals have not indicated any potential for allergic reactions to *Bacillus thuringiensis* or its components, including the delta-endotoxin in the crystal protein. Despite decades of widespread use of *Bacillus thuringiensis* as a pesticide (it has been registered since 1961), there have been no confirmed reports of immediate or delayed allergic reactions to the delta-endotoxin itself despite significant oral, dermal and inhalation exposure to the microbial product. Several reports under FIFRA section 6(a)2 have been made for various *Bacillus thuringiensis* products claiming allergic reactions. However, the Agency determined these reactions were not due to *Bacillus thuringiensis* itself or any of the Cry toxins. Thus, the potential for the CryIA(c) protein to be a food allergen is minimal.

III. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-pesticides, there are no cumulative effects.

IV. Aggregate Exposures

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-pesticides chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-pesticides are contained within plant cells which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed corn products and drinking water. However a lack of mammalian toxicity and the digestibility of the plant-pesticides has been demonstrated. The use sites for CryIA(c) delta endotoxin are all agricultural for control of lepidopteran insects. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold 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 database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. In this instance, EPA believes there is reliable data to support the conclusion that the plant-pesticides are not toxic to mammals, including infants and children and thus there are no threshold effects of concern. As a result, the provision requiring an additional margin of exposure does not apply.

V. Endocrine Effects

EPA does not have any information regarding endocrine effects on these pesticides at this time. The Agency is not requiring information on the endocrine effects of these plant-pesticides at this time; and Congress allowed 3 years after August 3, 1996, for the Agency to implement a screening and testing program with respect to endocrine effects.

VI. Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the CryIA(c) protein and the genetic material necessary for its production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-pesticides. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA section 408(j)(3) for *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production in all plants.

Bacillus thuringiensis subspecies *kurstaki* CryIA(c) delta-endotoxin and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant-pesticides in all plant raw agricultural commodities. ''Genetic material necessary for its production'' means the genetic material which comprise (1) genetic material encoding the CryIA(c) delta-endotoxin and (2) its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the CryIA(c) delta-endotoxin, such as promoters, terminators, and enhancers.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) as was provided in the old section 408 and in section 409.

However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 10, 1997 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the Virginia address given under the **ADDRESSES** section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300462]. 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 subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, l993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, l994).

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

Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C.804(2).

List of Subjects in 40 CFR Part 180

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

Dated: March 25, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1155 is revised to read as follows:

§ 180.1155 Bacillus thuringiensis subspecies Kurstaki CryIA(c) and the genetic material necessary for its production in all plants; exemption from the requirement of a tolerance.

Bacillus thuringiensis subspecies *kurstaki* CryIA(c) delta-endotoxin and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant-pesticides in all plant raw agricultural commodities. ''Genetic material necessary for its production'' means the genetic material which comprise genetic material encoding the CryIA(c) delta-endotoxin and its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the CryIA(c) delta-endotoxin, such as promoters, terminators, and enhancers.

[FR Doc. 97–9376 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300469; FRL–5598–6]

Glyphosate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes permanent tolerances for residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] in or on the raw agricultural commodities (RACs) corn, field, grain; corn, field, stover; corn, field, forage; aspirated grain fractions; sorghum, grain; sorghum, grain, stover; and oats. The residues from the treatment of field corn include residues in or on field corn varieties which have been genetically modified to be tolerant of glyphosate. Monsanto Company submitted petitions to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub L. 104–179) requesting the tolerances.

EFFECTIVE DATES: These regulations become effective April 11, 1997. Written objections must be submitted by June 10, 1997.

ADDRESSES: Written objection and hearing requests, identified by the docket control number, [OPP–300469; PP 8F3672, 8F3673, 5F4555, 6E4645], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections 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 request filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, CM#2, 1921 Jefferson Davis Highway., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300469; PP 8F3672, 8F3673, 5F4555, 6E4645]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found in Unit XIII. of this document.

FOR FURTHER INFORMATION CONTACT: By mail, Philip V. Errico, Product Manager, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Highway., Arlington, VA, (703)–305–6027; e-mail: errico.philip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 24, 1996 (61 FR 67804)(FRL–5576–6), EPA issued a Notice of Filing amending petitions PP 8F3672, 8F3673, 5F4555, 6E4645 to bring the petitions into conformity with the Food Quality Protection Act (FQPA of 1996). The notice contained a summary of the petitions prepared by the petitioner and the summary contained conclusions and arguments to support its conclusion that the petitions complied with FPQA. In that notice Monsanto Company, 700 14th Street, NW., Suite 1100, Washington, DC 20005 proposed amending 40 CFR 180.364 by establishing a regulation to permit residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt and/or the monoammonium salt of glyphosate in or on the raw agricultural commodities (RACs) field corn grain at 1.0 ppm; field corn forage at 1.0 ppm; field corn fodder at 100 ppm; aspirated grain fractions at 200 ppm; grain sorghum at 15 ppm; grain sorghum fodder at 40 ppm; and oats at 20 ppm. The notice stated that PP 5F4555 specifically related to field corn which had been genetically modified to be tolerant to glyphosate.

The Agency received one comment opposing the tolerances. The commentor's objection was based on concerns of (1) Enhanced exposure of the public to glyphosate and other ingredients of the Roundup formulations, (2) greater use of Roundup/glyphosate which will result in adverse effects to the environment and human health, and (3) exposure of the public to Roundup from consumption of the corn or the animal product from animals fed corn. EPA's response to this comment is provided below.

The Agency determined that the terminology for field corn grain, field corn, forage; field corn, fodder; aspirated grain fractions; grain sorghum, and grain sorghum, fodder; should be corrected to read corn, field, grain; corn, field, stover; corn, field, forage; aspirated grain fractions; sorghum, grain; and sorghum, grain, stover; The subject regulation is therefore amended accordingly.

The data submitted in the petitions and other relevant material have been evaluated. The glyphosate toxicological data listed below were considered in support of these tolerances.

I. Toxicological Profile

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and Toxicity Category IV. Technical glyphosate is not a dermal sensitizer.

2. A 1–year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 500 mg/kg/day.

3. A 2–year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

4. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day HDT (males) and 34 mg/kg/day HDT (females) and a systemic NOEL of 31 mg/kg/day HDT (males) and 34 mg/kg/day HDT (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

5. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 1, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females) HDT and a systemic NOEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver

weight) at 940 mg/kg/day (males) HDT and 457 mg/kg/day (females) based on decreased body weight gain 1,183 mg/kg/day (females) HDT.

6. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental NOEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternebrae, and decrease in fetal body weight at 3,500 mg/kg/day, and a maternal NOEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head, and deaths at 3,500 mg/kg/day HDT.

7. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a developmental NOEL of 175 mg/kg/day (insufficient litters were available at 350 mg/kg/day to assess developmental toxicity); a maternal NOEL of 175 mg/kg/day based on increased incidence of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day HDT.

8. A multigeneration reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with the parental no-observed-effect level/lowest observed effect level (NOEL/LOEL) 30 mg/kg/day HDT. The only effect observed was an increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) in the high-dose male F3b pups. Since the focal tubular dilation of the kidneys was not observed at the 1,500 mg/kg/day level HDT in the rat reproduction study discussed below, but was observed at the 30 mg/kg/day level HDT in the three-generation rat reproduction study the latter was a spurious rather than glyphosate-related effect. Therefore, the parental and reproductive (pup) NOELs are 30 mg/kg/day.

9. A two generation reproduction study with rats fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a systemic NOEL of 500 mg/kg/day based on soft stools in F0 and F1 males and females at 1,500 mg/kg/day HDT and a reproductive NOEL 1,500 mg/kg/day HDT.

10. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis;* reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium;* and dominant-lethal mutagenicity test in mice (all negative).

II. Dose Assessment Response

1. *Reference Dose (RfD).* The RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The RfD is determined by using the toxicological end point or the NOEL for the most sensitive mammalian toxicological study. To assure the adequacy of the RfD, the Agency uses an uncertainly factor in deriving it. The factor is usually 100, based on the assumption that certain segments of the human population could be as much as 100 times more sensitive than the species represented by the toxicology. The Agency has determined a RfD of 2.0 mg/kg/day based on the maternal toxicity NOEL of 175 mg/kg/day from the developmental study with rabbits. The LOEL of 350 mg/kg/day HDT was based on treatment related findings of diarrhea, nasal, discharge, and death (62.5% of the does died by gestation day 21). Developmental toxicity was not observed at any dose tested.

2. *Carcinogenicity classification*. The carcinogenic potential of glyphosate was first considered by a panel, then called the Toxicology Branch AD Hoc Committee, in 1985. The Committee, in a consensus review dated March 4, 1985, classified glyphosate as a Group C carcinogen based on an increased incidence of renal tumors in male mice. The Committee also concluded that dose levels tested in the 26–month rat study were not adequate for assessment of glyphosate's carcinogenic potential in this species. These findings, along with additional information, including a reexamination of the kidney slides from the long-term mouse study, were referred to the FIFRA Scientific Advisory Panel (SAP). In its report dated February 24, 1986, SAP classified glyphosate as a Group D Carcinogen (inadequate animal evidence of carcinogenic potential). SAP concluded that, after adjusting for the greater survival in the high-dose mice compared to concurrent controls, that no statistically significant pairwise differences existed, although the trend was significant.

The SAP determined that the carcinogenic potential of glyphosate could not be determined from existing data and proposed that the rat and/or mouse studies be repeated in order to classify these equivocal findings. On reexamination of all information, the Agency classified glyphosate as a Group D Carcinogen and requested that the rat study be repeated and that a decision on the need for a repeat mouse study would be made upon completion of review of the rat study.

Upon receipt and review of the second rat chronic feeding/carcinogenicity study, all toxicological findings for glyphosate were referred to the Health Effects Division Carcinogenicity Peer Review Committee on June 26, 1991, for discussion and evaluation of the weight of evidence on glyphosate with particular emphasis on its carcinogenic potential. The Peer Review Committee classified glyphosate as a Group E (evidence of noncarcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. This classification is based on the following findings: (1) None of the types of tumors observed in the studies (pancreatic islet cell adenomas in male rat, thyroid c-cell adenomas and/or carcinomas in male and female rats, hepatocellular adenomas and carcinomas in male rats, and renal tubular neoplasms in male mice) were determined to be compound related; (2) glyphosate was tested up to the limit dose on the rat and up to levels higher than the limit dose in mice; and (3) there is no evidence of genotoxicity for glyphosate.

III. Non-Dietary (Residential and Other Non-Occupational) Exposure Assessment

Glyphosate is registered for use on non-food sites such as around ornamental, shade trees, shrubs, walks, driveways, flowerbeds, home lawns, farmsteads including building foundations, along and in fences, in dry ditches and canals, along ditchbanks, farm roads, shelterbelts, forestry, Christmas trees, and industrial sites and other noncrop or industrial areas such as airports, lumber yards, manufacturing sites, utility substations, parking areas, petroleum tank farms, and pumping station.

Margins of Exposure (MOE's) are determined for non-dietary exposure based on toxicological endpoints and measured or estimated exposures. Since glyphosate is a group E chemical (evidence of non-carcinogenicity for humans), the 21 day dermal study lacked any observable effects at the limit dose, and no adverse effects were observed in developmental toxicity studies in rats up to 1,000 mg/kg/day and rabbits up to 175 mg/kg/day, no toxicological endpoints are applicable. Because available data indicated no evidence of significant toxicity via the dermal or inhalations routes, MOE's were not calculated and risk assessments are not required for non-occupational (residential uses).

Some glyphosate end-use products (non ''homeowner'' uses only) are in Toxicity Categories I and II for dermal and eye irritation and have been associated with illness or injuries related to skin or eye irritation. Under the protective clothing requirements of the Worker Protection Standards (WPS), handlers of these products are expected to be adequately protected.

IV. Dietary Exposure Assessment

The use of a pesticide may result directly or indirectly, in residues in food. Primary residues or indirect/inadvertent residues in the agricultural commodities harvested from the crop cultured with the aid of pesticide are determined by chemical analysis. To account for the diversity of growing conditions, culture practices, soil types, climatic conditions, crop varieties and method of use of the pesticide, data from studies that represent the resulting commodities are collected and evaluated to determine an appropriate level of the residue that would not be exceeded if the pesticide is used as represented in the studies. Available field trial data for glyphosate support these tolerances. However, because of the recent imposition of additional field trial data for specific geographical representation, additional field trial data are required for corn and grain sorghum. Because insufficient time has elapsed since imposition of these requirements the petitioner is being granted conditional registrations while obtaining the data. The conduct of the field trial and guidelines for determining the residues are given in EPA ''OPPTS Test Guidelines, Series 860, Residue Chemistry, August 28, 1996. See **Federal Register**, 61 FR 44308–44311 for availability of document.

The nature of the residue in plants and animals is adequately understood and consists of the parent, glyphosate. The Agency has decided that only glyphosate parent is to be regulated in plant and animal commodities and that the major metabolite, AMPA (aminomethylphosphonic acid) is not of toxicological concern regardless of its levels in food.

Secondary residues in animal commodities are expected from these uses. However, the established livestock tolerances are adequate to cover secondary residues which may result from feeding field corn (both conventional and genetically modified), and sorghum commodities with residues of glyphosate to animals. Since no U.S. registration has been proposed for oats, it has been concluded that oat feed items are not likely to enter channels of trades in the United States.

V. International Harmonization

Codex MRL's for the residues of glyphosate exist in maize and the straw and fodder, dry cereal grains at 0.1 and 100 ppm respectively. Mexican limits on maize exist at 0.1 ppm. Canadian limits on all other food crops exist at 0.1 ppm. MRL's of 20 ppm, 10 ppm, and 0.1 ppm on oats are established/pending for CODEX, Canada, and Mexico, respectively. Codex MRLS were established based on preplant/preemergent use of glyphosate and are identical to the existing tolerances for these crops under the same us conditions in the United States. The increased tolerances now being proposed on corn and sorghum are based on new preharvest uses of glyphosate in the United States. The import tolerance being proposed for oats is being proposed to harmonize with other international MRL's. The Agency suggests the petitioner consider providing all relevant studies to Codex once the U.S. tolerances are established in order that the Codex MRLs may be amended to accommodate the use needs of the United States.

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant commodities. These methods include GLC (Method I in Pesticides Analytical Manual (PAM) II; the limit of detection is 0.05 ppm). and HPLC with fluormetric detection. Use of the GLC method is being discouraged due to lengthiness of the procedure. The HPLC method has undergone successful Agency validation and has been published in PAM II. A GC/MS method for glyphosate in crops has also been validated by the Agency. This method has not yet been submitted for publication in PAM II.

VI. Aggregate Exposure Assessment

1. *Acute dietary*. There is no concern for acute effects due to dietary exposure to glyphosate.

2. *Chronic dietary*. Using the Dietary Risk Evaluation System (DRES), a routine chronic exposure analysis was performed for glyphosate. The chronic analysis for glyphosate is a worst case estimate of dietary exposure with all residues at tolerance levels and 100% of the commodities assumed to be treated with glyphosate.

3. *Drinking water*. 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).

The lifetime health advisory and maximum contaminant level (MCL), for glyphosate are the same and given as 700 parts per billion in the U.S. EPA Office of Drinking Water's ''Drinking Water Health Advisory; Pesticides.'' Environmental Fate data for glyphosate indicate little potential for the7 chemical to migrate to ground water, but some potential for residues to migrate to surface waters. Glyphosate is not highly mobile and not persistent in a soil or water environment. 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 exposures 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 glyphosate 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 glyphosate in water, even 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.

4. *Non occupational (residential) and non-dietary*. Glyphosate is registered for residential uses. As part of the hazard assessment process, the Agency reviews the available toxicological database to determine the endpoints of concern. For glyphosate, the Agency does not have a concern for acute, short-term, or intermediate occupational or residential risk since the available data do not indicate any evidence of significant toxicity by the dermal or inhalation routes, or from a 1 day or single event exposure by the oral route. Therefore, an

acute, a short-term, or intermediate-term occupational or residential risk assessment was not required.

As part of the hazard assessment process it was determined that a chronic residential assessment was not necessary. The exposures which would result from the use of glyphosate were determined to be of an intermittent nature. The frequency and duration of these exposures do not exhibit a chronic exposure pattern. The exposures do not occur often enough to be considered a chronic exposure i.e., a continuous exposure that occurs for at least several months. Therefore, residential exposures were not aggregated with dietary exposures in estimating chronic risk.

6. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408 (b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' 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 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 mechanisms issues can be resolved. These pesticides include pesticides that are toxicologically and structurally dissimilar to existing chemical substances (in which 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 glyphosate 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 common mechanism of toxicity, glyphosate 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 glyphosate has a common mechanism of toxicity with other substances. A condition of the registrations associated with these tolerances will be that the registrant will provide common mechanism data in a timely manner when and if the Agency asks for it. After EPA develops methodologies for more fully applying common mechanism of toxicity issues to risk assessments, the Agency will develop a process (either as a part of the periodic review of pesticides or otherwise) to reexamine those tolerance decisions made earlier.

VII. Determination of Safety for the U.S. Population and Nonnursing Infants

Using the Dietary Risks Evaluation System (DRES) a chronic analysis was based on 100% of the crop treated and all residues at tolerance levels. Based on the dietary risk assessment the proposed uses utilize 0.115% of the RfD for U.S. population; 0.189% of the RfD for non-nursing infants under 1 year old; 0.84 of the RfD for nursing infants under 1 year old; 0.866% of the RfD for children 1 to 6 years old; and 0.443% of the RfD for children 7 to 12 years old. Total aggregate exposure from glyphosate residues in food, taking into account existing and proposed uses, uses 1% of the RfD for the overall U.S. population and nursing infants: 3% of the RfD for nonnursing infants under 1 year old and children 1 to 6 years old; 3%; and 2% of the RfD for children 7 to 12 years old. An additional risk assessment for residential uses was not required because of no evidence of significant toxicology via dermal or inhalation routes. Even though the Agency has not 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 glyphosate to exceed the RfD. EPA concluded that there is reasonable certainty that no harm will occur from aggregate exposure to glyphosate.

VIII. Determination of Safety for Infants and Children

FFCDA section 408 provides that EPA shall apply an additional tenfold 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 database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins or 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 tenfold margin of exposure when EPA has a complete data base under existing guidelines and when the severity of the effect in infants and children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin of exposure.

Risk to infants and children was determined by the use of two developmental toxicity studies in rats and rabbits and the two-generation reproduction study in rats discussed below. The developmental toxicity studies evaluates the potential for adverse effects on the developing organism resulting from exposure during prenatal development. The reproduction study provides information relating to effects from exposure to the chemical on the reproductive capability of both (mating) parents and on systemic toxicity.

The toxicological database for evaluating pre- and post-natal toxicity for glyphosate is considered to be complete at this time. In the rabbits, no developmental toxicity was observed at doses where significant maternal toxicity was noted (death and clinical signs at 350 mg/kg/day, highest dose tested HDT. In the rat developmental toxicity study, maternal (systemic) toxicity was noted at 3,500 mg/kg/day, HDT as diarrhea, decreased mean body weight gain, breathing rattles, inactivity, red matter around the nose and mouth, and on forelimbs and dorsal head, decreases in total implantations/dam and inviable fetuses/dam and death (24% of the group). The developmental (pup) NOEL is 1,000 mg/kg/day. The

developmental (pup) toxicity was exhibited only in the high dose as increased numbers of litters and fetuses with unossified sternebrae, and decreased mean fetal body weights. However, these developmental effects were assumed to be due to the extreme maternal toxicity. No effects on reproductive parameters were observed.

In the rat two-generation reproduction study, parental toxicity was observed at 1,500 mg/kg/day as soft stools, decreased food consumptions and body weight gain. The developmental (pup) toxicity was also only exhibited at 1,500 mg/kg/day as decreased body weight gain of the F1a, F2a, and F2b male and female pups during the second and third weeks of lactation.

The RfD is based on the NOEL for maternal toxicity in the rabbit developmental study. No developmental effects were noted in the study. In the rat developmental study effects were noted only at 20x higher than the NOEL used for the RfD. No pre- or post-natal effects were seen in any study absent maternal toxicity. In the rat reproduction study developmental effects were noted at 5x the NOEL used for the RfD. The Agency does not believe the effects seen in these studies are of such concern to require an additional safety factor. Accordingly, the Agency believes the RfD has an adequate margin of protection for infants and children. The percent RfD utilized by glyphosate is from 1% for nursing infants (less than 1 year old) to 3% for non-nursing infants and children 1 to 6 years old. EPA concluded that there is reasonable certainty that no harm will occur to infants and children from aggregate exposure to glyphosate.

IX. Other Considerations

Endocrine effects. No specific tests have been conducted with glyphosate to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there are no significant findings in other relative toxicity studies, i.e., teratology and multi-generation reproductive studies which would suggest that glyphosate produces these kinds of effects.

X. Data Gaps

Data desirable but lacking for these tolerances include specific geographic representative grain sorghum and corn field residue trials. Because of insufficient time since the imposition of additional data requirements the Agency is requiring that this data be submitted as a condition of registration.

Based on the information cited above, the Agency has determined that the establishment of these tolerances by amending 40 CFR part 180 will be safe, therefore the tolerances are established as set forth below.

In addition to the time-limited tolerances being amended, since for purposes of establishing tolerances FQPA has eliminated all distinctions between raw and processed food, EPA is combining the tolerances that now appear in §§ 185.3500 and 186.3500 with the tolerances in § 180.364 and is eliminating §§ 185.3500 and 186.3500.

XI. Response to Comment

The one commenter raised several concerns regarding these tolerances.

1. *Increased exposure.* The commenter was concerned that approval of these tolerances would lead to increased exposure to glyphosate because it would enhance Monsanto's ability to market glyphosate-tolerant corn and thus use glyphosate. The commentor argued that therefore approval of the tolerances would not protect the public health rather it would increase risk.

EPA response. Approval of these tolerances may lead to higher exposure the glyphosate residues. That is the case when ever EPA approves a new tolerance. The question before EPA in ruling on a tolerance petition is whether the tolerance meets the FFDCA's safety standard. As detailed above, EPA has concluded that these tolerances do meet the reasonable certainty of no harm standard. This standard requires consideration of exposure to glyphosate from existing uses as well as exposure from the uses covered by the tolerances in the petition before EPA.

2. *Glyphosate residues in foods derived from animals.* The commenter asked EPA to confirm that the major route of exposure resulting from these tolerances would be from foods derived from animals. The commenter also asked how the tolerances would effect the level of glyphosate residues in animal feeds and what percentage of glyphosate treated corn would be consumed by humans.

EPA response. The nature of glyphosate residue in plants and animals has been explored by various studies that have been reviewed by the Agency. A separate peer review committee ''Metabolism Committee'' evaluated glyphosate plant and animal commodities and decided that the major metabolite is not of toxicological concern regardless of its level in food. Due to the use pattern of glyphosate, secondary residues in animal commodities are expected. Corn grain, forage, fodder, and aspirated grain fractions are animal feed items. Based on the proposed tolerances on aspirated grain fractions, corn stover, forage, and grain, the dietary burden of at most 78 ppm glyphosate residue in/on corn commodities, (if all corn commodities (including corn genetically altered to be tolerant to glyphosate) are fed)) will be covered by the tolerances currently established on meat, milk, eggs, and livestock commodities including the recently (April 5, 1996, 61 FR 15192)(FRL–5351–1), established tolerances on kidney of cattle, goats, hogs, horses, poultry, and sheep at 4 ppm. A chronic (long-term) dietary exposure analysis (DRES) was performed for the use of glyphosate in/on corn. The Agency used the following conservative (worst-case) assumptions: all corn (including genetically altered corn) would have the same tolerance level residues, and that 100 percent of the crop is treated. It is not believed that actual residues would reach tolerance levels, or that 100 percent of the total corn crop would be treated with glyphosate. The Agency feels that the risk to human health does not exceed a level of concern (100%) due to the percent of the RfD using the ''worst case'' assumptions. These dietary risk numbers include corn consumed directly by humans, plus meat, milk and eggs from which animals consumed corn raw agricultural commodities as feed. Published and proposed glyphosate tolerances result in the following percents of the RfD used: 1% for the overall U.S. population and nursing infants, 2% for children (7 to 12 years old), and 3% non-nursing infants less than 1 year old and children (1 to 6 years old).

3. *Toxicology concerns.* The commenter challenged Monsanto's assertions that glyphosate was of low toxicity. The commenter cited the fact that glyphosate ranked number 3 in California for acute illnesses in agriculture from 1984–1990. The commenter claimed that glyphosate is a skin and eye irritant, a possible carcinogen, a mutagen, and a reproductive toxicant. In support of glyphosate's carcinogenicity, the commenter claimed that one of the metabolites or breakdown products of glyphosate is formaldehyde and the commenter asserted that formaldehyde is a carcinogen, mutagen, and reproductive toxicant.

Additionally, the commenter claimed that a study showed that glyphosate decreased lung function and that studies showed that glyphosate inhibits enzymes involved in the detoxification of chemicals.

4. *Acute illnesses and skin and eye irritation—EPA response.* Data indicate that technical-grade glyphosate is in Toxicity Category III and Toxicity Category IV and that technical glyphosate is not a dermal sensitizer. Some formulations of glyphosate are in Category I and II where skin and eye irritation were associated with acute illnesses. Some of these formulations are being phased out of the U.S. market. Handlers and users of remaining formulations in Category I and II are expected to be adequately protected by the protective clothing requirements of the Worker Protection Standards (WPS). Data reviewed by the Agency on current formulations place these formulations in Toxicity Category III and IV.

5. *Carcinogen, mutagen and reproductive toxicity—EPA response.* Data indicate that glyphosate is a group E carcinogen (evidence of noncarcinogenicity for studies in humans, causes no pre- or post-natal effects in any study absent maternal toxicity, and is not a mutagen (refer to toxicology discussion above for a detailed discussion of carcinogenicity, reproductive, developmental and mutagenicity testing).

6. *Formaldehyde—EPA response.* Available rat metabolism data, residue data, and environmental data indicate that the major metabolite of glyphosate is AMPA which is further degraded by soil microbes to CO_2. The Agency has determined that AMPA is not of toxicological concern. (Glyphosate Reregistration Eligibility Decision (RED) issued by EPA September 1993). Available data do not indicate that formaldehyde is a metabolite or a degradate of glyphosate.

7. *Decreased lung function—EPA response.* Data reviewed by the Agency for glyphosate formulations for acute inhalation place most glyphosate formulations in Toxicity Category III and IV for acute inhalation. The Agency believes that handlers of these formulations and any formulations that may be Toxicity Category I or II are expected to be adequately protected by the protective clothing required by WPS.

8. *Interference with enzymes—EPA response.* The mode of action for glyphosate does involve interference with enzymes that result in the death of plants by inhibiting the biosynthesis of aromatic amino acids which along with other biochemical changes results in the death of plants. This is a common mode of action for various pesticides, but the Agency has no information that indicates that the handling or ingestion of glyphosate in small amounts result in interference with enzymes in the human body.

9. *Inert Ingredients.* The commentor also contended that EPA must examine the toxicity of the inert ingredients in glyphosate products in setting these tolerances.

EPA response. These tolerances establish maximum legal levels of residues of the active ingredient glyphosate that can be present in certain foods. These tolerances do not legalize any inert ingredients in glyphosate products. If a pesticide product also contains inert ingredients, those inert ingredients must have tolerances or exemptions from the requirement or their presence in food will render the food adulterated. Before approving a pesticide registration under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., EPA checks to make sure that all needed tolerances or exemptions are in place. All inerts present in current glyphosate formulations for use on food crops either have tolerances or exemptions from tolerances. Additionally, under the FIFRA registration process, EPA evaluates the potential risks posed by inert ingredients. The Agency requires a full disclosure of inert ingredients for each Roundup formulation to determine acute toxicity such as acute eye, skin, inhalation, and dermal sensitization. Refer to previous discussions on skin, eye, and acute inhalation for discussion of formulations.

10. *Persistence in soil.* The commenter claimed that glyphosate persists in soils from 3 to 141 days.

EPA response. Data from background field dissipation trials from eight sites show that the median half-life (DT50) for glyphosate applied at maximum use rates was 13.9 days with a range of 2.6 (Texas) to 140.6 (Iowa) days. Acceptable aerobic soil, aerobic aquatic, and anaerobic aquatic metabolism studies demonstrate that under those conditions at 25 °C in the laboratory, glyphosate degrades rapidly with half-lives of approximately 2,7, and 8 days respectively. The reported half-lives from the field studies conducted in the coldest climates, i.e. Minnesota, New York, and Iowa, were the longest at 28.7 days, 127.8 days, and 140.6 days respectively indicating that glyphosate residues in the field are somewhat more persistant in cooler climates as opposed to milder ones (Georgia, California, Arizona, Ohio, and Texas. AMPA was the major degradate in all studies. AMPA has been determined to not be of toxicological concern. (Glyphosate Reregistration Eligibility Decision (RED) issued by EPA September, 1993).

11. *Environmental effects.* The commenter also claimed that data was lacking regarding glyphosate's toxicity to soil invertebrates, reptiles, and amphibians.

EPA response. Environmental Effects are considered under FIFRA. In examining glyphosate under FIFRA the Agency required several tests with mammals; acute tests to birds, fish, aquatic invertebrates, and bees; subacute dietary testing on birds; avian reproduction; and chronic testing on freshwater fish and freshwater invertebrates. Data submitted to and reviewed by the Agency indicate that effects to birds, mammals, fish, and invertebrates are minimal. (Glyphosate Registration Eligibility Decision (RED) issued by EPA September, 1993).

XII. Objections and Hearing Requests

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

Any person adversely affected by this regulation may, by June 10, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given below (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and

substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any or all of that information as ''Confidential Business Information'' (CBI). Information marked as CBI 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.

XIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300469; PP 8F3672, 8F3673, 5F4555, 6E4645] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may 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 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 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.

XIV. Regulatory Assessments Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Pursuant to 5 U.S.C. 801 (a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agriculatural commodities, Pesticides and pest, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: March 28, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

1. In part 180:

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

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

b. Section 180.364 is amended as follows:

i. By adding a paragraph heading to paragraph (a), and in the table by revising the entry ''Grain crops (except wheat)'' and alphabetically adding the commodities: aspirated grain fractions; corn, field, forage; corn, field, grain; corn, field, stover; oats; sorghum, grain; and sorghum, grain, stover.

ii. In paragraph (b) by transferring the entries in the table and alphabetically adding them to the table in paragraph (a), by removing the remaining text of paragraph (b), by adding a paragraph heading and reserving paragraph (b).

iii. In paragraph (d) by transferring the entries in the table and alphabetically adding them to the table in paragraph (a), by removing the remaining text of paragraph (d).

iv. In paragraph (c) is amended by adding a paragraph heading, ''Indirect and inadvertent residues'', and redesignating the amended paragraph (c) as new paragraph (d), and by adding a heading and reserving new paragraph (c).

§ 180.364 Glyphosate, tolerances for residues.

(a) *General.* * * *

Commodity	Parts Per Million (ppm)
* * * * *	
Aspirated grain fractions	200.0
* * * * *	
Corn, field, forage	1.0
Corn, field, grain	1.0
Corn, field, stover	100.0
* * * * *	
Grain crops (except wheat, corn, oats, and grain sorghum)	0.010
* * * * *	
Oats, grain	20.0
* * * * *	
Sorghum, grain	15.0
Sorghum, grain, stover	40.0

Commodity				Parts Per Million (ppm)
*	*	*	*	*

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

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

(d) *Indirect or inadvertent residues.* * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read.

Authority: 21 U.S.C. 346a and 348.

§ 185.3500 [Removed]

b. In § 185.3500 by transferring the entries in the tables to paragraphs (a)(1), (2), and (3), and alphabetically adding them to the table in paragraph (a) of § 180.364, and by removing the remainder of § 185.3500.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 185 continues to read.

Authority: 21 U.S.C. 342, 348 and 701.

§ 186.3500 [Removed]

b. In § 186.3500 by transferring the entries in the tables to paragraphs (a) and (b) and alphabetically adding them to the table in paragraph (a) of § 180.364, and by removing the remainder of § 186.3500.

[FR Doc. 97–9231 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300466; FRL–5597–9]

RIN 2070–AC78

Myclobutanil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the fungicide myclobutanil in or on the raw agricultural commodity strawberries in connection with EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of myclobutanil on strawberries in Florida. This regulation establishes a maximum permissible level for residues of myclobutanil in this food 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 tolerance will expire and be revoked by EPA on March 31, 1998.

DATES: This regulation becomes effective April 11, 1997. Objections and requests for hearings must be received by EPA on June 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP], 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], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis 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 number [OPP]. 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: Stephen Schaible, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308–8337, e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, 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 a tolerance for residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenol)-1H-1,2,4-triazole-1-propanenitrile (free and bound), hereafter referred to as myclobutanil, in or on strawberries at 0.5 part per million (ppm). This tolerance will expire and be revoked on March 31, 1998.

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 CFR 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) 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 Exemption for Myclobutanil on Strawberries and FFDCA Tolerances

On January 14, 1997 the state of Florida availed itself of the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of myclobutanil on strawberries to control powdery mildew (*Sphaerotheca fuliginea*). Florida stated that emergency conditions developed due to planting of powdery mildew-infected transplants purchased from Canadian suppliers and the occurrence of weather conditions conducive to disease development. Florida claims that the registered alternatives are either not efficacious or are phytotoxic. Without the use of myclobutanil, it is claimed that strawberry growers will suffer severe economic losses.

As part of its assessment of this crisis declaration, EPA assessed the potential risks presented by residues of myclobutanil in or on strawberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemption only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. This tolerance for myclobutanil will permit the marketing of strawberries treated in accordance with the provisions of the section 18 emergency exemption. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although this tolerance will expire and be revoked on March 31, 1998, under FFDCA section 408(l)(5), residues of myclobutanil not in excess of the amounts specified in the tolerance remaining in or on strawberries 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 exemption. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether myclobutanil meets the requirements for registration under FIFRA section 3 for use on strawberries, or whether a permanent tolerance for myclobutanil for strawberries would be appropriate. This action by EPA does not serve as a basis for registration of myclobutanil by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than Florida 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 exemption for myclobutanil, 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 percent or less of the RfD) is generally considered acceptable by EPA.

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

In examining aggregate exposure, 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 percent of every crop considered in the analysis is treated with the pesticide being evaluated. 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 and that the market for pest control on any given crop seldomly belongs to a single pesticide.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group.

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 this action. Myclobutanil is already registered by EPA for numerous food and feed uses, as well as residential use on annuals and perennials, turf, shrubs and trees, and African violets (indoor). EPA has received a petition requesting establishment of a tolerance for myclobutanil on strawberries. The time-limited tolerance associated with the current emergency exemption does not constitute a decision regarding the pending petition for tolerance on strawberries. For the purposes of this emergency exemption, EPA has sufficient data to assess the hazards of myclobutanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of myclobutanil on strawberries at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing this tolerance follows.

A. Toxicological Profile

1. *Chronic toxicity.* The RfD of 0.025 milligrams per kilogram per day (mg/kg/day) was established by the Agency based on the chronic feeding study in rats with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. There was testicular atrophy at the lowest effect level (LEL) of 9.9 mg/kg/day.

2. *Acute toxicity.* The Office of Pesticide Programs (OPP) has determined that data do not indicate the potential for adverse effects after a single dietary exposure.

3. *Short-term toxicity.* OPP has determined that short- and intermediate-term risk assessments are appropriate for occupational and residential routes of exposure. OPP recommends that the NOEL of 100 mg/kg/day, taken from the 21–day dermal toxicity study in rats, be used for the short term dermal MOE calculations. This dose level was the highest tested in the study. For intermediate term MOE calculations, OPP recommended using the NOEL of 10 mg/kg/day from the 2-generation rat study. Effects seen at the LEL in this study (50 mg/kg/day) were decreases in pup body weight, an increased incidence in number of stillborns, and atrophy of the prostate and testes. Though these endpoints have been identified, no acceptable reliable exposure data to assess these potential risks are available at this time.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified myclobutanil as Group E chemical - ''no evidence of carcinogenicity for humans'' - based on the results of carcinogenicity studies in two species. The doses tested are adequate for identifying a cancer risk.

B. Aggregate Exposure

Established U.S. tolerances for myclobutanil and its alcohol metabolites (free and bound) are found in 40 CFR 180.443, and range from 0.05 ppm for milk to 5 ppm for cherries (sweet and sour). The proposed time-limited tolerance of 0.5 ppm is based on residue field trial data on strawberries submitted in support of PP# 4E4302. There are no livestock feed items associated with the proposed use on strawberries, so no additional livestock dietary burden will result from this section 18 registration. Therefore, existing meat, milk, and poultry tolerances are adequate.

For the purpose of assessing potential chronic dietary exposure from myclobutanil, EPA generally assumed tolerance level residues and percent of crop treated refinements to estimate the Anticipated Residue Contribution (ARC) from the proposed and existing food uses of myclobutanil. The use of percent of crop treated data for most of the existing food uses in this analysis, as well as the use of refined residue information for the existing use on bananas, results in a more refined estimate of exposure than the TMRC.

In conducting this exposure assessment, EPA has made conservative assumptions—most all foods considered in the analysis were assumed to have myclobutanil residues present at the level of the tolerance. Percent crop treated data were used for many commodities with existing myclobutanil tolerances (stone fruits, pome fruits, grapes, and cottonseed) in the chronic exposure assessment, but were not considered when calculating the dietary burden from which secondary residue tolerances in meat, milk and poultry were derived or for the proposed use on strawberries. Thus, in making a safety determination for the subject section 18 tolerances, EPA is taking into account this conservative exposure assessment.

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). Review of terrestrial field dissipation data by the Agency indicates that myclobutanil did not leach into groundwater in either sandy loam or coastal soil. There is no established Maximum Concentration Level for residues of myclobutanil in drinking water. No drinking water health advisories have been issued for myclobutanil. The ''Pesticides in Groundwater Database (EPA 734–12–92–001, September 1992) has no information concerning myclobutanil.

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 exposure to contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause myclobutanil 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 myclobutanil 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.

There are residential uses of myclobutanil and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational exposure scenarios. OPP has identified toxicity endpoints for short- and intermediate-term residential risk assessment. However, no acceptable, reliable exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment.

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 myclobutanil 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, myclobutanil 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 myclobutanil has a common mechanism of toxicity with other substances.

C. Determination of Safety for U.S. Population

EPA has calculated that chronic dietary exposure to myclobutanil will utilize 14 percent of the RfD for the U.S. population. Available information indicate that there will be little, if any exposure to myclobutanil in drinking water and EPA has no reliable exposure information regarding the level of exposure to myclobutanil from non-occupational, non-dietary sources. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to myclobutanil residues.

D. Determination of Safety for Infants and Children

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

From the rat developmental study, the maternal (systemic) NOEL was 93.8 mg/kg/day, based on rough hair coat, and salivation at the lowest observed effect level (LOEL) of 312.6 mg/kg/day. The developmental (pup) NOEL was 93.8 mg/kg/day, based on increased incidences of 14th rudimentary and 7th cervical ribs at the LOEL of 312.6 mg/kg/day. From the rabbit developmental study, the maternal (systemic) NOEL was 60 mg/kg/day, based on reduced weight gain, clinical signs of toxicity and abortions at the LOEL of 200 mg/kg/day. The developmental (pup) NOEL was 60 mg/kg/day, based on increases in number of resorptions, decreases in litter size, and a decrease in the viability index at the LEL of 200 mg/kg/day.

From the rat reproduction study, the maternal (systemic) NOEL was 2.5 mg/kg/day, based on increased liver weights and liver cell hypertrophy at the LOEL of 10 mg/kg/day. The developmental (pup) NOEL was 10 mg/kg/day, based on decreased pup body weight during lactation at the LEL of 50 mg/kg/day. The reproductive (parental) NOEL was 10 mg/kg/day, based on increased incidence of stillborns, and atrophy of the testes, epididymides, and prostate at the LEL of 50 mg/kg/day.

FFDCA section 408 provides that EPA shall apply an additional uncertainty factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines, based on reliable data, that a different uncertainty factor would be appropriate. Generally, EPA believes that reliable data support using the standard hundredfold uncertainty factor for extrapolating from animal studies to humans, where there is a complete data base and the effects of concern are not such to indicate such a hundredfold uncertainty factor is inadequate. Based on current toxicological data requirements, the data base for myclobutanil relative to pre- and post-natal toxicity is complete. The Agency notes that there is approximately a 25-fold difference between the developmental NOEL of 60 mg/kg/day from the rabbit developmental toxicity study and the NOEL of 2.5 mg/kg/day from the chronic rat feeding study which was the basis of the RfD. It is further noted that in both the rabbit and rat developmental toxicity studies, the developmental NOEL and maternal NOEL are the same (60 mg/kg/day for the rabbit and 93.8 mg/kg/day for the rat). In the rat reproduction study, the maternal NOEL (2.5 mg/kg/day) was four times lower than the developmental (pup) and reproductive NOELs (10 mg/kg/day). These studies indicate that there does not appear to be additional sensitivity for infants and children in the absence of maternal toxicity and that there is no concern that a hundredfold uncertainty factor will be inadequate. EPA concludes that a hundredfold uncertainty factor is appropriate for infants and children.

EPA has calculated that the percent of the RfD that will be utilized by chronic dietary exposure to residues of myclobutanil ranges from 22 percent for children 7 to 12 years old, up to 73 percent for non-nursing infants. Given that aggregate exposure is still below the Agency's level of concern, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to myclobutanil residues.

V. Other Considerations

The metabolism of myclobutanil in plants and animals is adequately understood for the purposes of this tolerance. There is no Codex maximum residue level established for residues of myclobutanil on strawberries. There is a practical analytical method for detecting and measuring levels of myclobutanil in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in this tolerance. EPA has provided information on this method to the Food and Drug Administration. 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 Highway, Arlington, VA 22202, (703) 305–5805.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemption is established for residues of myclobutanil in strawberries at 0.5 ppm. This tolerance will expire on March 31, 1998.

In addition to the new tolerance being established, since for purposes of establishing tolerances FQPA has eliminated all distinctions between raw and processed food, EPA is combining the tolerances that now appear in § § 185.4350 and 186.4350 with the tolerances in § 180.443 and is eliminating § § 185.4350 and 186.4350.

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 10, 1997 file written objections to any aspect of this regulation 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]. 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. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994). 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.

Under 5 U.S.C. 801(a)(1)(A) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food and additives, Pesticides and pest.

40 CFR Part 186

Environmental protection, Animal feeds Pesticides and pest.

Dated: April 4, 1997.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. Section 180.443 is amended as follows:

i. In paragraph (a) by adding the heading.

ii. In paragraph (b) by transferring and alphabetically adding the entry in the table to the table in paragraph (a) and by removing the remaining text.

iii. In paragraph (c) by transferring and alphabetically adding the entries in the table to the table in paragraph (a) and by removing the remaining text.

iv. By redesignating paragraph (d) as paragraph (b) and by revising newly redesignated paragraph (b).

v. By adding the headings and reserving new paragraphs (c) and (d).

§ 180.443 Myclobutanil; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide myclobutanil, in connection with use of the pesticide under section 18 emergency exemption granted by EPA. The tolerances are specified in the following table. These tolerances expire and are automatically revoked on the date specified in the table.

Commodity	Parts per million	Expiration/Revocation Date
Cucurbit vegetables	0.3	November 30, 1997
Strawberries	0.5	March 31, 1998

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

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

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.4350 [Removed]

b. The entries in the table to § 185.4350 are transferred and added alphabetically to the table in paragraph (a) of § 180.443; the remainder of § 185.4350 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C.342, 348, and 701.

§ 186.4350 [Removed]

b. The entries in the table to § 186.4350 are transferred and added alphabetically to the table in paragraph (a) of § 180.443; the remainder of § 186.4350 is removed.

[FR Doc. 97–9378 Filed 4–11–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300467; FRL–5598–7]

RIN 2070–AB78

Sethoxydim; Extension of Time-limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends the effective dates for the established time-limited tolerances for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (also referred to in this document as sethoxydim) and its metabolites in or on various raw agricultural commodities. The Interregional Research Project Number 4 (IR-4) requested these time extensions under the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation becomes effective April 11, 1997. Objections and hearing request must be received by June 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300467; PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M

St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300467; PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, 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: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8783, e-mail:jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 8, 1997 (62 FR 1114)(FRL–5582–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, announcing the filing of amendments to pesticide petitions (PP) for tolerances by the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. This notice included a summary of the petitions prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing. The amended petitions requested that 40 CFR 180.412 be amended by extending the effective dates to expire on December 31, 1998, for the time-limited tolerances established for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus at 4.0 parts per million (ppm), carrot at 1.0 ppm, cranberry and endive at 2.0 ppm, and peppermint and spearmint at 30.0 ppm. Registration for use of sethoxydim on endive is limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

These tolerances were established as time-limited tolerances since an acceptable carcinogenicity study is needed in one rodent species. A repeat chronic feeding/carcinogenicity study in rats was submitted to EPA in November of 1995 and is awaiting review. The Agency will reassess sethoxydim tolerances based on the outcome of the rat chronic feeding/carcinogenicity study and, if appropriate, will establish permanent tolerances for asparagus, carrot, cranberry, endive, peppermint and spearmint.

I. Risk Assessment and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, 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....''

A. Method of Determining Risks

Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the Reference Dose (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 and that the total acreages for all crops with established tolerances are seldom treated with the pesticide.

The RfD is assumed to be the exposure at or below which daily aggregate exposure over a lifetime will not pose an appreciable risk to human health. To assure the adequacy of the RfD, the Agency uses an uncertainty factor in deriving it. The factor is usually 100, based on the assumption that certain segments of the human population could be as much as 100 times more sensitive than the species represented by the toxicology data. The aggregate daily exposure to a pesticide residue at or below the RfD (expressed as l00 percent of the RfD) is generally considered acceptable by EPA.

If the pesticide is determined to be a human carcinogen, the toxicological end-point must be determined based on the nature of the carcinogenic response and a knowledge of its mode of action. The Agency uses a weight of evidence approach in classifying the potential of the pesticide as a human carcinogen.

In addition to assessing long-term, chronic exposure to pesticide residues in food, the Agency also evaluates single-day or single event, acute exposure. Acute dietary exposure to residues of a pesticide in a food commodity is estimated by multiplying individual, single-day consumption estimates of that food by the tolerance level or the anticipated pesticide residue level. Each individual's daily exposure to a pesticide is the sum of the

food commodities that individual consumed on that given day multiplied by the residue assumed to be present on each food commodity consumed. Using this method, a distribution of possible daily exposures for a given population is established.

From this distribution, an upper end estimate of exposure is chosen and compared to the most sensitive no-observed-effect level (NOEL) from studies relating to the toxicological effect of acute concern (usually developmental toxicity or neurotoxicity) to derive a Margin of Exposure (MOE). The MOE is a measure of the level of safety that exists between the estimated exposure to a highly exposed individual and the level below which effects were observed in the available toxicological studies.

B. Toxicological Profile

1. A 1–year feeding study with dogs fed diets containing 0, 8.86/9.41, 17.5/19.9, and 110/129 milligrams per kilogram per day (mg/kg/day) (males/females) with a NOEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in male dogs at the 17.5-mg/kg/day dose level.

2. A 2–year chronic feeding/carcinogenicity study with mice fed diets containing 0, 40, 120, 360, and 1,080 ppm (equivalent to 0, 6, 18, 54, and 162 mg/kg/day) with a systemic NOEL of 120 ppm (18 mg/kg/day) based on non-neoplastic liver lesions in male mice at the 360 ppm (54 mg/kg/day) dose level. There were no carcinogenic effects observed under the conditions of the study. The maximum tolerated dose (MTD) was not achieved in female mice.

3. A 2–year chronic feeding/carcinogenic study with rats fed diets containing 0, 2, 6, and 18 mg/kg/day with a systemic NOEL greater than or equal to 18 mg/kg/day (highest dose tested). There were no carcinogenic effects observed under the conditions of the study. This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and an MTD was not achieved.

4. A second chronic feeding/carcinogenic study with rats fed diets containing 0, 360, and 1,080 ppm (equivalent to 18.2/23.0, and 55.9/71.8 mg/kg/day (males/females). The dose levels were too low to elicit a toxic response in the test animals and failed to achieve an MTD or define a lowest effect level (LEL). Slight decreases in body weight in rats at the 1,080-ppm dose level, although not biologically significant, support a free-standing no-observed-adverse-effect-level (NOAEL) of 1,080 ppm (55.9/71.8 mg/kg/day (males/females)). There were no carcinogenic effects observed under the conditions of the study.

5. A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, and 1,000 mg/kg/day with a maternal NOAEL of 180 mg/kg/day and a maternal LEL of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOAEL of 180 mg/kg/day and a developmental LEL of 650 mg/kg/day (21 to 22 percent decrease in fetal weights, filamentous tail, and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes).

6. A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, and 400 mg/kg/day with a maternal NOEL of 320 mg/kg/day and a maternal lowest observed effect level (LOEL) of 400 mg/kg/day (37 percent reduction in body weight gain without significant differences in group mean body weights and decreased food consumption during dosing); and a developmental NOEL greater than 400 mg/kg/day (highest dose tested).

7. A 2–generation reproduction study with rats fed diets containing 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) with no reproductive effects observed under the conditions of the study.

8. Mutagenicity studies including: Ames assays were negative for gene mutation in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA1537, with and without metabolic activity; a Chinese hamster bone marrow cytogenetic assay was negative for structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells *in vivo*; and recombinant assays and forward mutations tests in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative for genotoxic effects at concentrations of greater than or equal to 100 percent.

9. In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

C. Toxicological Endpoints

1. *Dietary*— i. *Chronic risk*. The RfD for sethoxydim is calculated at 0.09 milligrams per kilogram of body weight per day (mg/kg/ bwt/day. The RfD is based on a NOEL of 8.86 mg/kg/day from a 1–year feeding study in dogs and an uncertainty factor of 100. This study demonstrated equivocal anemia in male dogs at the LOEL of 17.5 mg/kg/day.

ii. *Acute risk*. EPA has determined that an NOEL of 180 mg/kg/day from a developmental toxicity study in rats should be used to assess acute dietary risk. Decreased fetal weights, filamentous tail, lack of tail, and delayed ossification were observed at the LOEL of 650 mg/kg/day. The population of concern for this risk assessment are females 13+ years old.

iii. *Cancer risk*. EPA has not fully determined the carcinogenic potential of sethoxydim. No positive tumor findings have been reported at this time in the evaluations of rat or mouse carcinogenicity studies. A repeat carcinogenicity study in rats was submitted by the registrant and is under evaluation by EPA. There was no reported carcinogenicity in the repeat rat study.

2. *Non-dietary*. i. *Short- and intermediate-term risk*. A risk assessment is not needed since no effects were observed in a 21–day dermal toxicity study in rabbits at the highest dose tested (1,000 mg/kg/day) or in a developmental toxicity study in rabbits at the highest dose tested (400 mg/kg/day).

ii. *Chronic risk*. Chronic risk estimates are not required since non-dietary (occupational/residential) exposure will not be chronic.

D. Aggregate Exposures and Risks

1. *From food*. Food exposure to sethoxydim will be from ingestion of raw and processed agricultural commodities, as listed in 40 CFR 180.412 and 185.2800. The existing sethoxydim tolerances (published, including the current time-limited tolerances) result in a TMRC that is equivalent to the following percentages of the RfD:

U.S Population	36%
Non-Nursing Infants (<1 year old)	61%
Children (1 to 6 years old)	72%

The chronic dietary risk assessment used conservative assumptions resulting in risk estimates as high as 72% of the reference dose. Actual risks using more realistic assumptions would likely result in significantly lower risk estimates.

The acute dietary risk assessment resulted in a MOE of 1,200 for females (13+ years old), the population of concern. The assumptions in this assessment were: (1) All tolerance level residues, (2) 100% crop treated, (3) no mixing of commodities, and (4) all foods consumed in a day by a person had tolerance level residues. These

assumptions are extremely conservative; risk assessment using more realistic assumptions would result in an estimated MOE significantly greater than 1,200.

2. *From drinking water.* There is presently no established Maximum Concentration Level (MCL) for residues of sethoxydim in drinking water, and no health advisory levels for sethoxydim in drinking water have been established. Available monitoring studies, however, indicate that sethoxydim residues may migrate to ground water and surface water. In addition, the available data are inadequate to determine whether residues of the degradates of sethoxydim are likely to occur in water. Therefore, assessments of the risks posed to human health from exposure to potential sethoxydim residues in drinking water was conducted.

The data used to estimate exposure in water wells are from one study conducted in Missouri involving 40 rural domestic drinking water wells and 25 public supply drinking water wells. All of the available monitoring data show nondetectable residues of sethoxydim. Therefore, to estimate sethoxydim exposure for the purposes of exposure and risk assessment, a value equal to one-half of the limit of detection for the analytical methods was used to determine sethoxydim residues in the drinking water samples. Samples from the rural domestic drinking water wells and the public supply drinking water wells were analyzed with different analytical methods with different limits of detection (0.2 parts per billion (ppb) and 2 ppb, respectively). This risk assessment assumes exposure to be at 1 ppb based on one-half of the higher limit of detection (2 ppb). Exposure and risk was also estimated based on the highest sethoxydim residues (42 ppb) detected in ground water.

Exposures and risks to residues of sethoxydim in drinking water were calculated using the following formulas:

Adults (male): Exposure = (chemical concentration in micrograms (µg)/liter (L) in consumed water) × (10^{-3} mg/micrograms (µg)) divided by (70 kg body weight) × (2 L water consumed/day).

Children (1 to 6 years): Exposure = (chemical concentration in µg/L in consumed water) × (10^{-3} mg/µg)) divided by (10 kg body weight) × (1 L water consumed/day).

i. *Chronic exposures and risks from drinking water.* a. Adult (male) exposure (based on estimated residues in public water wells) = (1µg/L) × (10^{-3} mg/µg) divided by (70 kg body weight) × (2 L/day) = 2.85×10^{-5} mg/kg/day, which accounts for < 1% of the RfD.

b. Adult (male) exposure (based on highest concentration detected in ground water) = (42 µg/L) × (10^{-3} mg/µg) divided by (70 kg body weight) × (2 L/day) = 1.2×10^{-3} mg/kg/day, which accounts for 1% of the RfD.

c. Children (1 to 6 years old) exposure (based on estimated residues in public water wells) = (1 µg)/L) × (10^{-3} mg/µg) divided by (10 kg body weight) × (1 L/day) = 1×10^{-4} mg/kg/day, which accounts for < 1% of the RfD.

d. Children (1 to 6 years old) exposure (based on highest concentration detected in ground water) = (42 µg)/L) × (10^{-3} mg/µg) divided by (10 kg body weight) × (1 L/day) = 4.2×10^{-3} mg/kg/day, which accounts for 5% of the RfD.

ii. *Acute risk from drinking water.* a. Acute risk from residues of sethoxydim in drinking water were calculated as follows: Exposure = (chemical concentration in µg)/L in consumed water) × (10^{-3} mg/µg) divided by (kg body weight) × (liters (L) of water consumed/day).

b. Adult (female) exposure (based on highest concentration of sethoxydim detected in ground water) = (42 µg)/L) × (10^{-3} mg/µg) divided by (60 kg body weight) × (2 L/day) = 1.4×10^{-3} µg)/kg/day.

c. Children (1 to 6 years old) exposure (based on highest concentration of sethoxydim detected in ground water) = (42 µg)/L) × (10^{-3} mg/µg) divided by 10 kg body weight) × (1 L/day) = 4.2×10^{-3}.

d. Margins of Exposure were calculated based on the above exposure estimates as follows:

(i) For female adults consuming water containing 42 µg/L of sethoxydim the MOE is equal to $180/1.4 \times 10^{-3}$ = 130,000.

(ii) For children (1 to 6 years old) consuming water containing 42 µg)/L of sethoxydim the MOE is equal to $180/1.4 \times 10^{-3}$ = 43,000.

3. *From non-dietary (residential) exposure.* Sethoxydim is currently registered for use by homeowners on the following residential use sites: vegetables, fruits, flowers, shrubs, trees, and bedding plants. However, this risk assessment is not required.

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

E. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold MOE (safety) for infants and children in the

case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different MOE (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 MOE (usually 100x for combined inter- and intra-species variability)) and not the additional tenfold MOE when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE.

The data base for sethoxydim realtive to pre- and post-natal toxicity is complete and is summarized as follows:

1. *Developmental toxicity studies.* In the rat developmental toxicity study the maternal (systemic) NOEL is established at 180 mg/kg/day, based on irregular gait, decreased activity, excessive salivation and anogenital staining at 650 mg/kg/day. The developmental (pup) NOEL is 180 mg/kg/day, based on decreased fetal weights, filamentous tail, lack of tail, and delayed-ossification at 650 mg/kg/day.

In the rabbit developmental toxicity study the maternal (systemic) NOEL is established at 320 mg/kg/day, based on a 37% reduction in body weight gain without significant differences in group mean body weights and food consumption at 400 mg/kg/day. The developmental (pup) NOEL is ≥400 mg/kg/day (highest dose tested).

2. *Reproduction studies.* In a 2-generation reproduction study in the rat the maternal/reproductive NOEL is approximately 150 mg/kg/day, the highest dose tested. This study did not fully meet the requirements of achieving toxicity as defined by the Pesticide Assessment Guidelines (OPPTS-870); however, this study is considered usable for regulatory purposes and a freestanding NOEL is established at approximately 150 mg/kg/day (LOEL not established). There were no indications of toxicity, dose-related effects on fertility, or difficult deliveries in either parental generation.

Conclusions. The toxicological database for evaluating pre- and postnatal toxicity for sethoxydim is complete. Available data indicate that no developmental toxicity was observed in the rabbit study at the highest dose tested (400 mg/kg/day). Maternal toxicity was observed in the rabbit at the highest dose tested and consisted of significant reductions in body weight gain and food consumption. In the rat developmental study developmental toxicity was observed in the presence of significant maternal toxicity at a high dose level (650 mg/kg/day). There was no parental or reproductive toxicity observed in a multigeneration reproduction study at doses up to 150 mg/kg/day (highest dose tested). These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or postnatal sensitivity; and no additional uncertainty factor for increased sensitivity in infants and children is appropriate. Therefore, EPA concludes that reliable data support using a hundredfold uncertainty factor and that uncertainty factor will protect the safety of infants and children without an additional tenfold uncertainty factor. Based on very conservative exposure assumptions, EPA concludes that aggregate exposure to children and infants will not exceed the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.

F. Other Considerations

1. *Endocrine effects.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects were reported in the chronic toxicology studies described above. There were no observed pathology of the endocrine organs in these studies. There is no evidence at this time that sethoxydim causes endocrine effects.

2. *Metabolism in plants and animals.* The metabolism of sethoxydim in plants and animals is adequately understood for the purposes of these tolerances. The residues of concern in plants and animals are sethoxydim and its metabolites containing the 2-cyclohexen-l-one moiety calculated as sethoxydim, as specified in 40 CFR 180.412.

3. *Secondary residues.* Carrot culls are the only animal feed items associated with these uses. Secondary residues in animal commodities are not expected to exceed existing tolerances as a result of this use.

4. *Analytical method.* There is a practical analytical method for detecting and measuring levels of sethoxydim and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in this tolerance. Method 30G, is available in PAM, Vol II to enforce the tolerance expression. Method 30G is a capillary gas chromatography method which uses flame photometric detection in the sulfur mode and determines total residues of sethoxydim and its metabolites containing the 2-cyclohexen-l-one moiety.

5. *International tolerances.* There are no Codex, Canadian, or Mexican Maximum Residue Levels or tolerances established for sethoxydim in/on asparagus, endive, carrots, cranberry, or mint.

II. Summary of Findings

Both the chronic and acute dietary risk assessments are conservative and represent overestimates of risk because they assume tolerance level residues and 100% crop treated for all commodities having sethoxydim tolerances. Refinement of dietary exposure estimates using percent crop treated data and/or anticipated residue data would result in significantly lower dietary exposure estimates. Aggregate chronic risks are estimated at 37% of the RfD (36% for food and 1% for water) for the general population, and 77% of the RfD (72% for food and 5% for water for children (1 to 6 years old)). For acute dietary risks, the calculated MOE's for the population subgroup of concern (females 13+ years old) is 1,200 from residues of sethoxydim in food and > 130,000 for residues in drinking water. The aggregate MOE is also 1,200.

Based on the information cited above, the Agency has determined that the establishment of the time-limited tolerances by amending 40 CFR 180.412 will be safe; therefore, the time-limited tolerances are established as set forth below.

In addition to the time-limited tolerances being amended, since for purposes of establishing tolerances FQPA has eliminated all distinctions between raw and processed food, EPA is combining the tolerances that now appear in §§ 185.2800 and 186.2800 with the tolerances in § 180.412 and is eliminating §§ 185.2800 and 186.2800.

III. Objections and Hearing Requests

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

appropriate adjustments to reflect the new law.

Any person may, by June 10, 1997 file written objections to any aspect of this regulation 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 issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as 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.

IV. Public Docket

A record has been established for this rulemaking under docket number [OPP–300467; PP 0E3909, 2E4052, 2E4065, 2E4092, and 3E4162]. 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.

V. Regulatory Assessment Requirements

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

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

Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: April 4, 1997.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. In part 180:

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

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

b. Section 180.412 is amended as follows:

i. By revising the section heading to read as set forth below.

ii. By revising paragraph (a).

iii. In paragraph (b) by removing the text and by adding the heading ''*Section 18 emergency exemptions.*'', and reserving it.

iv. By revising paragraph (c).

v. By removing the text of paragraph (d), adding a heading entitled ''*Indirect and inadvertent residues.*'' and reserving it.

§ 180.412 Sethoxydim; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one (CAS Reg. No. 74051–80–2) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following commodities:

Commodity	Parts per million	Expiration/Revocation Date
Alfalfa, forage	40.0	None
Alfalfa, hay	40.0	None
Almond hulls	2.0	None
Apple pomace, wet and dry	0.8	None
Asparagus	4.0	December 31, 1998
Beans, dry	20.0	None
Beans, forage	10.0	None
Beans, hay	50.0	None
Beans, succulent	5.0	None
Blueberries	4.0	None
Brassica leafy vegetables	5.0	None
Bulb vegetables	1.0	None
Canola/rapeseed, meal	40.0	None
Canola/rapeseed	35.0	None
Carrot	1.0	December 31, 1998
Cattle, fat	0.2	None
Cattle, mbyp	0.2	None
Cattle, meat	0.2	None
Celery	1.0	None
Citrus fruits	0.5	None
Citrus molasses	1.5	None
Citrus pulp, dried	1.5	None
Clover, forage	35.0	None
Clover, hay	50.0	None
Cottonseed soapstock	15	None
Corn, field, grain	0.5	None
Corn fodder	2.5	None
Corn forage	2.0	None
Corn, sweet (K+CWHR)	0.2	None
Cranberry	2.0	December 31, 1998
Cottonseed	5.0	None
Cucurbits vegetables	4.0	None
Eggs	2.0	None
Flaxseed	5.0	None
Flaxseed meal	7	None
Flax straw	2.0	None
Fruiting vegetables	4.0	None
Goats, fat	0.2	None
Goats, mbyp	0.2	None
Goats, meat	0.2	None
Grape pomace, wet and dry	6.0	None
Grapes	0.2	None
Hogs, fat	0.2	None
Hogs, mbyp	0.2	None
Hogs, meat	0.2	None
Horses, fat	0.2	None
Horses, mbyp	0.2	None
Horses, meat	0.2	None
Lentils	30.0	None
Lettuce, head	1.0	None
Lettuce, leaf	2.0	None
Milk	0.05 (N)	None
Peanuts	25.0	None
Peanuts, hull	5.0	None
Peanut soapstock	75.0	None
Peas, dry	40.0	None
Peas, forage	20.0	None
Peas, hay	40.0	None
Peas, succulent	10.0	None
Peppermint, tops (stems and leaves)	30.0	December 31, 1998
Pome fruits	0.2	None
Potatoes	4.0	None
Potato flakes	8.0	None
Potato granules	8.0	None
Potato waste, processed (wet and dry)	8.0	None
Poultry, fat	0.2	None
Poultry, mbyp	2.0	None
Poultry, meat	0.2	None
Raisins	1.0	None
Raisin waste	1.0	None
Raspberries	5.0	None

Commodity	Parts per million	Expiration/Revocation Date
Sheep, fat	0.2	None
Sheep, mbyp	0.2	None
Sheep, meat	0.2	None
Soybean, hay	10.0	None
Soybeans	10.0	None
Spearmint, tops (stems and leaves)	30.0	December 31, 1998
Spinach	4.0	None
Strawberries	10.0	None
Sugar beet molasses	10.0	None
Sugar beet, roots	1.0	None
Sugar beet, tops	3.0	None
Sunflower meal	20.0	None
Sunflower seeds	7.0	None
Sweet potato	4.0	None
Tomato pomace, dried	12.0	None
Tomato products, concentrated	24	None
Tree nuts	0.2	None

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

(c) *Tolerances with regional registration.* Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the following commodities:

Commodity	Parts per million	Expiration/Revocation Date
Artichokes	3.0	None
Endive	2.0	December 31, 1998
Rhubarb	0.3	None

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

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.2800 [Removed]

b. Section 185.2800 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C.342, 348, and 701.

§ 186.2800 [Removed]

b. Section 186.2800 is removed.

[FR Doc. 97–9374 Filed 4–10–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300470; FRL–5598–2]

RIN 2070–AC78

Norflurazon; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the herbicide norflurazon in or on the raw agricultural commodities bermudagrass hay and forage in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of norflurazon on bermudagrass in the states of Alabama, Georgia, Louisiana, Mississippi, and Texas. This regulation establishes maximum permissible levels for residues of norflurazon 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 November 30, 1998.

DATES: This regulation becomes effective April 11, 1997. Objections and requests for hearings must be received by EPA on or before June 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300470], 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–300470], 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–300470]. 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 address: 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 norflurazon on bermudagrass forage at 2 ppm and bermudagrass hay at 3 ppm. These tolerances will expire on November 30, 1998.

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 Norflurazon on Bermudagrass and FFDCA Tolerances

EPA has authorized use under FIFRA section 18 of norflurazon on bermudagrass hay meadows and patures for control of grassy weeds. Bermudagrass requires at least 2 years to completely cover a planted area and successfully compete with annual grassy weeds. Successful establishment during the first 2 years is critically important to profitable production from a bermudagrass hay meadow. Annual grassy weed encroachment and resulting variable bermudagrass stands will reduce the quantity of hay produced and the overall quality. A hay field does not reach maximum hay production for 3 or 4 years after establishment depending on the degree of success in establishment. For the next 6 to 7 years, growers should receive maximum economic yield and return on their annual investments. The market will not accept bermudagrass hay contaminated with weeds or annual grasses. Bermudagrass stands often begin to decline after about 10 years due to diseases, insect problems, fertility imbalances, or environmental stresses. Establishment of a new stand of bermudagrass is the most cost effective way of maintaining maximum quality and quantity of hay. Atrazine and simazine, which traditionally provided control of these weeds, were voluntarily canceled in 1990 resulting in this urgent, nonroutine situation. After having reviewed their submissions, EPA concurs that emergency conditions exist.

As part of its assessment of these specific exemptions, EPA assessed the potential risks presented by residues of norflurazon on bermudagrass hay and forage. 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 norflurazon will permit the marketing of bermudagrass hay and forage treated in accordance with the provisions of the section 18 emergency exemptions.

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 November 30, 1998, under FFDCA section 408(l)(5), residues of norflurazon not in excess of the amount specified in these tolerances remaining in or on bermudagrass hay and forage 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 indicate that the residues are not safe.

EPA has not made any decisions about whether norflurazon meets the requirements for registration under FIFRA section 3 for use on bermudagrass or whether permanent tolerances for norflurazon for bermudagrass hay and forage would be appropriate. This action by EPA does not serve as a basis for registration of norflurazon 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 Alabama, Georgia, Louisiana, Mississippi, and Texas 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 norflurazon, 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 percent or less of the RfD) is generally considered acceptable by EPA.

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

In examining aggregate exposure, 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 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

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. Norflurazon is registered by EPA for several agricultural as well as non-agricultural uses. EPA believes it has sufficient data to assess the hazards of norflurazon and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of norflurazon on bermudagrass hay and forage. 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 norflurazon at 0.02 milligrams(mg)/kilogram(kg)/day. The RfD was established based on a NOEL (no observable effect level) of 1.53 mg/kg/day in a 6–month dog feeding study. The LEL (lowest effect level) was based on absolute and relative liver weight and increased cholesterol levels. An uncertainty factor (UF) of 100 was used to account for both inter-species extrapolation and intra-species variability.

2. *Acute toxicity.* Agency toxicologists have recommended that the developmental NOEL of 30 mg/kg/day from the rabbit developmental toxicity study be used for acute dietary risk calculations. The developmental LEL of 60 mg/kg/day is based on increased skeletal variations. 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 21–day dermal toxicity study

in rabbits for short- and intermediate-term MOE calculations.

The NOEL was 375 mg/kg/day and the LEL of 1,000 mg/kg/day was based on increased absolute and relative liver weights, and increased alkaline phosphatase.

4. *Carcinogenicity*. Norflurazon is classified as a ''Group C'', possible human carcinogen, by the Carcinogenicity Peer Review Committee (CPRC). The CPRC recommended using the RfD approach for quantification of human risk.

B. Aggregate Exposure

Tolerances for residues of norflurazon in or on food/feed commodities are currently expressed in terms of the herbicide norflurazon (4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2H)-pyridazinone) and its desmethyl metabolite 4-chloro-5-(amino)-2-alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2H)-pyridazinone (40 CFR 180.356, 185.4450, and 186.4450). Existing norflurazon tolerances for meat, milk, poultry, and eggs are not expected to be exceeded and are adequate to cover any secondary residues which might occur in animal commodities as a result of this use on bermudagrass.

For the purpose of assessing chronic dietary exposure from norflurazon, EPA assumed tolerance level residues and 100% of crop treated for the proposed use of norflurazon. 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 (RfDs or acute dietary NOELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. 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 norflurazon 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 norflurazon 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, norflurazon is persistent and mobile. The ''Pesticides in Groundwater Data Base'' (EPA 734-12-92-001, September 1992) reported sampling of wells for norflurazon residues in Texas and California. Texas reported 188 wells sampled, California reported 6 wells sampled. No detection of residues were reported in any of the sampled wells. There is no established Maximum Concentration Level (MCL) for residues of norflurazon in drinking water. No drinking water health advisory levels have been established for norflurazon.

Norflurazon is registered for uses, such as fencerows and around buildings, 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.

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 norflurazon 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, norflurazon 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 norflurazon 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 chronic dietary exposure to norflurazon in food from published tolerances will utilize 10 percent of the RfD for the U.S. population. EPA generally has no concern for chronic exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The acute dietary

exposure endpoint of concern for norflurazon is developmental. For the population of concern, females 13+ years, a MOE of 3,000 was calculated. This MOE value does not exceed the Agency's level of concern for acute dietary exposure. Dietary cancer concerns are adequately addressed by the chronic exposure analysis using the RfD. Short- and intermediate-term aggrgate risk takes into account exposure from chronic dietary food and water plus indoor and outdoor residential exposure. Short- and intermediate-term MOE's for the U.S. population was calculated to be 11,000. Despite the potential for exposure to norflurazon from drinking water and outdoor residential uses, EPA does not expect the aggregate exposure to exceed 100% of the RfD or the Agency's level of concern for acute, short- and intermediate-term dietary exposure. EPA concludes that there is a reasonable certainty that no harm will result for the U.S. poulation from aggregate exposure to norflurazon residues.

D. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold 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 database 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 norflurazon relative to pre- and post-natal toxicity is complete.

The results of the rabbit developmental toxicity study required an acute dietary risk assessment be performed for additional pre-natal sensitivity due to skeletal variations. However, the MOE of 3,000 is adequate to protect against any pre-natal fetal risks. In the rabbit developmental toxicity study, the NOEL of 30 mg/kg/day was the same for both developmental and maternal toxicity. The developmental LEL of 60 mg/kg/day was based on increased skeletal variations and decreased mean fetal weight. The maternal LEL of 60 mg/kg/day was based on decreased body weight and abortions. Although there were developmental effects at 60 mg/kg/day in rabbit fetuses, these findings only occurred in the presence of maternal toxicity. In the rat developmental toxicity study, the developmental NOEL was identified at; 400 mg/kg/day (HDT), while the maternal (systemic) NOEL was <100 mg/kg/day. The acute dietary exposure endpoint of concern for norflurazon is developmental (increased skeletal variations). For the population subgroup of concern, females 13+ years, the calculated Margin of Exposure (MOE) value is 3,000.

The results of the 2-generation reproductive toxicity study will be used to assess the potential for additional pre- and post-natal sensitivity. The parental (systemic) NOEL was 10.2 mg/kg/day and the reproductive NOEL was 50.8 mg/kg/day. The reproductive LEL of 102.5 mg/kg/day was based on increased pup deaths, increased stillborns and decreased lactation index. These effects occurred in the presence of maternal toxicity. This indicates that there is no extra post-natal sensitivity. The NOEL used to establish the RfD is approximately 10-fold lower than the pup NOEL from the reproduction study; therefore, EPA concludes that reliable data support use of the standard uncertainty factor as protecting the safety of infants and children and that an additional 10-fold margin of exposure is unnecessary.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary (food) exposure to residues of norflurazon ranges from 15% for nursing infants (<1 year old) up to 47% 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 norflurazon residues in drinking water is not expected to result in an exposure which would exceed the RfD. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to norflurazon residues.

V. Other Considerations

The metabolism of norflurazon in plants and animals is adequately understood for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of norflurazon and its desmethyl metabolite in or on bremudagrass hay and forage. The residue of concern, for the purposes of this tolerance, is norflurazon and its desmethyl metabolite. Adequate methods for purposes of data collection and enforcement of tolerances for norflurazon and its desmethyl metabolite are available. Methods for determining norflurazon residues are described in the Pesticide Analytical Manual, Vol. II.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of norflurazon in or on bermudagrass forage at 2 ppm and bermudagrass hay at 3 ppm. These tolerances will expire and be revoked by EPA on November 30, 1998. In addition to the new tolerance being established, since FQPA eliminates all distinctions between raw and processed food, EPA is combining the tolerances that now appear in §§ 185.4450 and 186.4450 into § 180.356. Subsequently, §§ 185.4450 and 186.4450 are removed.

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 10, 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–300470]. 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 tolerance, 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 Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Parts 180, 185, and 186

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

Dated: April 4, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. Section 180.356 is amended by redesignating the existing text as paragraph (a), adding a paragraph heading and adding alphabetically three new entries to the table therein to the newly redesignated paragraph (a), adding a new paragraph (b), and reserving paragraphs (c) and (d) to read as follows:

§ 180.356 Norflurazon, tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* *
Citrus molasses	1.0
* * *	* *
Dried citrus pulp	0.4
* * *	* *
Dried hops	3.0

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide norflurazon (4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2H)pyridazinone) and its desmethyl metabolite 4-chloro-5-(amino)-2-alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2H)-pyridazinone 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
Grasses, Bermuda, Forage	2.0	November 30, 1998
Grasses, Bermuda, Hay	3.0	November 30, 1998

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

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

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.4450 [Removed]

b. Section 185.4450 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348 and 701.

§ 186.4450 [Removed]

b. Section 186.4450 is removed.

[FR Doc. 97–9375 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 2

[CGD 97–001]

RIN 2115–AF41

Delegation of Authority to Officer in Charge, Marine Inspection.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is authorizing Officers in Charge, Marine Inspection (OCMIs) to redelegate signature authority for certain vessel inspection documents. Currently, the OCMI signs all vessel inspection documents. This rule will authorize redelegation of that function to reduce the number of documents OCMIs must sign.

DATES: This rule is effective on April 11, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LT Eric Christensen, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), (202)267–1055.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The delegation of authority from the Commandant of the Coast Guard to Officer in Charge, Marine Inspection gives signature authority to the OCMI for various inspection documents. During a recent reorganization, the Coast Guard established Activity Commands which combine OCMI, Captain of the Port (COTP), and Group functions. Activities are large units that perform a large number of tasks including many requiring the OCMI's signature. This rule will authorize redelegation of that signatory function to reduce the number of vessel inspection documents OCMIs must sign personally.

Discussion and Change

The rationale for this change is that many routine documents don't require the personal attention of the OCMI, and increasing responsibilities of the OCMI will mean that the official's attention is needed more urgently elsewhere. Regulations currently require the OCMI to personally sign hundreds of inspection documents issued by each Marine Safety Office each year. In many cases, a new computer-generated Certificate of Inspection is based on an administrative change such as ownership or address and not on any substantive change in the vessel particulars. Authority to redelegate signatory authority would relieve the OCMI of a substantial paperwork burden.

The Coast Guard is proceeding directly to a final rule under section 553(b)(3)(A) of the Administrative Procedures Act (5 U.S.C. 551 *et seq.*) which excludes rulemakings relating to agency organization, procedure, or practice from the requirements of public notice and comment. These changes are administrative and will not impact the type or quality of Coast Guard services performed.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As this rule involves internal Agency practices and procedures, it will not impose any costs on the public.

Collection of Information

This rule contains no new collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

Federalism

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

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that, under § 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with paragraphs 2.B.2.e.(34) (a) and (b), concerning regulations that are editorial or procedural and concerning internal agency functions or organization. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 2 as follows:

PART 2—VESSEL INSPECTIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12334, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

2. Section 2.01–30 is added to read as follows:

§ 2.01–30 Delegation of OCMI signature authority.

The OCMI may redelegate to one individual on his or her staff authority to sign documents issued under this subpart.

Dated: March 31, 1997.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–9409 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–94; RM–8790]

Radio Broadcasting Services; Eufaula, Wagoner, Warner, Sand Springs, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tri-Mac Broadcasting (now K95.5, Inc.), reallots Channel 271A from Wagoner to Warner, OK, as the community's first local aural transmission service, and modifies the license of Station KRQZ-FM to specify Warner as its community of license. *See* 61 FR 20206, May 6, 1996. Channel 271A can be allotted to Warner in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.2 kilometers (0.7 miles) northwest, at coordinates 35–33–27 North Latitude and 95–14–41 West Longitude, to avoid a short spacing to Station KENA-FM, Channel 271C3, Mena, AR. The counterproposal filed by Music Sound Radio, Inc., licensee of Station KTFX(FM), Sand Springs, OK, to substitute Channel 272C2 for Channel 272A at Sand Springs was not accepted for consideration because there is no conflict between the allotment of Channel 271A at Warner and Channel 272C2 at Sand Springs. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–94, adopted March 26, 1997, and released April 4, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Wagoner, Channel 271A and by adding Warner, Channel 271A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–9439 Filed 4–10–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–207; RM–8874]

Radio Broadcasting Services; Cawker City, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ruby J. Hoeflicker, allots Channel 242C3 to Cawker City, Kansas, as the community's first local aural transmission service. *See* 61 FR 55125, October 24, 1996. Channel 242C3 can be allotted to Cawker City in compliance with the Commission minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 242C3 at Cawker City are 39–30–30 NL and 98–25–54 WL. With this action, this proceeding is terminated.

DATES: Effective May 19, 1997. The window period for filing applications will open on May 19, 1997, and close on June 19, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–207, adopted March 26, 1997, and released April 4, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082;47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Cawker City, Channel 242C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–9435 Filed 4–10–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961203339–7063–02; I.D. 111896B]

RIN 0648–AI88

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery Off Alaska; Scallop Vessel Moratorium

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

ACTION: Final rule.

SUMMARY: NMFS approves a temporary moratorium on the entry of additional vessels into the scallop fishery off Alaska. This action implements Amendment 2 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) as recommended by the North Pacific Fishery Management Council (Council). The purpose of Amendment 2 is to curtail increases in fishing capacity and provide stability for industry while the Council develops a long-term limited access system for this fishery. This action is necessary to promote the conservation and management objectives of the FMP.

DATES: Effective May 12, 1997 through June 30, 2000, except for § 679.4(g)(1)(ii), which will become effective on July 1, 1997, through June 30, 2000; and the amendments to

§§ 679.2, 679.4(c)(10)(i), and 679.43 will become effective May 12, 1997.

ADDRESSES: Copies of Amendment 2 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery in the exclusive economic zone (EEZ) off Alaska is managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and approved by NMFS on July 26, 1995. Regulations implementing the FMP are set out at 50 CFR part 679. General regulations that also affect fishing in the EEZ are set out at 50 CFR part 600.

At its April 1996 meeting, the Council adopted Amendment 2 and recommended that NMFS prepare a rulemaking to implement the amendment. A notice of availability of Amendment 2 was published in the **Federal Register** on December 3, 1996 (61 FR 64087), and invited comment on the amendment through February 3, 1997. No written comments were received on the amendment. A proposed rule to implement Amendment 2 was published in the **Federal Register** on December 26, 1996 (61 FR 67990). Comments on the proposed rule were invited through February 10, 1997. One letter containing three comments on the proposed rule was received by the end of the comment period. These comments are summarized and responded to in the Response to Comments section below.

Upon reviewing the reasons for Amendment 2, and the comments on the proposed rule to implement it, NMFS has determined that this action is necessary for the conservation and management of the scallop fishery off Alaska. Amendment 2 was approved by NMFS on March 5, 1997, under section 304(b) of the Magnuson-Stevens Act. Additional information on this action may be found in the preamble to the proposed rule and in the EA/RIR/FRFA.

Response to Comments

Comment 1. The moratorium will authorize 15 vessels to operate in Federal waters outside Cook Inlet. We believe this is too large a fleet to be economically sustainable. NMFS and the State of Alaska manage the scallop fishery by establishing total allowable catch (TAC) limits that are actually the upper limit of a range of harvest that will be permitted. It appears that analysis of the scallop moratorium has focused on the TAC as if it were the amount guaranteed to the scallop fleet for harvest. However, harvests are often stopped before the TAC is reached, due to attainment of the crab bycatch limit or because declining catch per unit effort in the fishery indicates that the resource is not healthy enough to sustain yield at the TAC level. Consequently, the published TACs do not accurately portray the availability of scallop resource for harvest.

In our experience of over 20 years in the Alaska scallop fishery, declines in catch closely follow years of overcapitalization. In our view, the Federal waters outside Cook Inlet cannot support 15 vessels. The scallop fishery has never sustained that level of effort for more than a 2– or 3-year period, and those periods of overharvest have always been followed by years when effort was reduced to one or even zero vessels. We agree with the conclusion in the proposed rule—that four to six vessels could harvest the available quota. However, because the available quota is overstated, reviewers may misunderstand the economics of the fishery. Under the actual harvest levels realized in the fishery, four to six vessels may make a living—nothing more.

Response. NMFS agrees that the scallop resource may be insufficient to support all qualified vessels in a year-round fishery. However, the scallop vessel moratorium is designed as a temporary measure to curtail additional increases in fishing capacity and provide stability for industry while a long-term limited access program is developed. The moratorium qualification criteria were established by the Council after extensive analysis, public testimony, and debate. These qualification criteria will achieve the Council's objectives while treating past and present participants in the fishery in a fair and equitable manner.

Comment 2. Vessels that immigrate to the scallop fishery from other areas or fisheries in which they are licensed are able to return to those fisheries after a downturn in the scallop stock. Vessels that have depended exclusively on the Alaskan scallop fishery to the extent that they hold no permits nor expertise in other fisheries or areas are unable to compensate for losses in the scallop fishery. Ultimately, then, the price for overcapitalization is paid only by those who exclusively depend on the Alaskan scallop fishery.

Response. Comment noted. Also, see response to comment 1.

Comment 3. We agree with ending the qualifying period in 1993 as approved by the Council. Although not stated in the proposed rule, the emergency action required of the Council and NMFS in reaction to unrestricted fishing by a vessel that had renounced its Alaskan registration also contributed significantly to the delay in issuance of the moratorium proposed rule.

Response. Comment noted.

Elements of the Scallop Vessel Moratorium

The following paragraphs explain each aspect of the scallop vessel moratorium.

Applicability

Beginning July 1, 1997, any vessel fishing for scallops in the EEZ off Alaska must carry a valid scallop moratorium permit at all times, and the vessel owner or operator must be named on the moratorium permit.

Duration of the Moratorium

The scallop vessel moratorium will remain in effect for 3 years from July 1, 1997, unless repealed or replaced by a permanent limited access program. Under Amendment 2, the Council may recommend that the moratorium be extended for no more than 2 years if a permanent limited access program is imminent.

Qualification Criteria

A vessel qualifies for inclusion in the moratorium if it made a legal landing of scallops during 1991, 1992, or 1993; or during at least 4 separate years from 1980 through 1990. This two-tier approach emphasizes recent participation in the fishery by allowing all vessels with any legal landings in 1991, 1992, or 1993 to qualify. Historic participants qualify under the more restrictive standard of a legal landing during at least 4 separate years from 1980 through 1990.

Scallop moratorium permits will be issued to the person (or successor in interest) who owned the qualifying vessel when it most recently made a qualifying landing. If that vessel were sold during or after the moratorium qualification period, the moratorium permit would be available to the person who owned the vessel (or successor in interest) when it most recently made a qualifying landing, such that each vessel generates only one moratorium permit.

Area Endorsements

Moratorium permits will be endorsed for fishing in Federal waters within Registration Area H (Cook Inlet) or fishing within Federal waters outside Registration Area H. Qualified vessels must have made at least one legal landing of scallops during the qualifying period within an endorsement area to receive an endorsement for that area. No crossovers will be allowed between Registration Area H and waters outside Registration Area H unless a vessel qualifies in both areas.

Vessel Reconstruction and Maximum Length Overall (LOA)

To prevent increased capitalization in the scallop fishery, lengthening of a vessel is limited to no more than 1.2 times or 20 percent of the vessel's LOA on January 20, 1993. For vessels under reconstruction on January 20, 1993, vessels are limited to the LOA on the date reconstruction was completed, with no additional increases allowed. Each scallop moratorium permit will specify a maximum LOA based on the above criteria. These restrictions will allow for some upgrading of vessels to improve stability and safety, while limiting the further overcapitalization that could occur through massive reconstruction of existing vessels.

Transferability

Moratorium permits are valid on any vessel that is less than or equal to the maximum LOA identified on the permit, provided that the vessel owner or operator is named on the moratorium permit. A person may transfer a moratorium permit to another person if a completed transfer application is submitted to NMFS and subsequently approved. In this event, a new permit will be issued in the name of the person who received the transferred permit. A permit transfer is required to reflect any change in permit ownership including the addition or deletion of a partner's name. In addition, the area endorsements on a moratorium permit may not be transferred independently of the permit itself.

Exemptions

Vessels less than or equal to 26 ft (7.9 m) LOA in the Gulf of Alaska, and less than or equal to 32 ft (9.8 m) LOA in the Bering Sea and Aleutian Islands area, are exempt from the scallop moratorium when fishing for scallops with dive gear. An operator of a vessel under the size limits listed above is still required to carry a valid scallop moratorium permit on board when fishing with dredge gear or when dredge gear is on board.

Appeals

NMFS will issue an initial administrative determination to each applicant who is denied a scallop moratorium permit. An initial administrative determination may be appealed by the applicant in accordance with the procedures established for the individual fishing quota program at § 679.43. An initial administrative determination that denies an application for a scallop moratorium permit may authorize the affected person to catch and retain scallops with an interim permit. Any interim permit that authorizes fishing will expire on the effective date of the final agency action relating to the application. An administrative determination denying the issuance of a scallop moratorium permit or application for transfer is the final agency action for purposes of judicial review.

Technical Changes to Existing Regulations

This final rule contains technical changes to the existing definitions of ''legal landing'', ''maximum LOA'', ''moratorium qualification'', ''moratorium species'', and ''qualifying period'' set out at § 679.2. These technical changes are necessary to clarify which terms apply only to the existing groundfish and crab moratorium and which terms also would apply to the scallop moratorium.

A technical change also is made to the description of the groundfish and crab moratorium appeals process at § 679.4(c)(10)(i) to specify that appeals are to be sent to the Administrator, Alaska Region, NMFS (Regional Administrator), rather than to the Chief, RAM Division. This change is necessary to make § 679.4(c)(10)(i) consistent with the appeals process described at § 679.43(c). In addition, § 679.43(a) is revised to indicate that the appeals process described at § 679.43 also applies to scallop moratorium appeals made under § 679.4(g).

Changes from the Proposed Rule

The following changes were made from the proposed rule.

1. The applicable date of the scallop moratorium was delayed until July 1, 1997, which coincides with the start of the scallop fishing season in most areas of Alaska. The purpose of this change is to provide industry with sufficient time to apply for and receive scallop moratorium permits.

2. The language governing permit validity at § 679.4(g)(1)(iii)(A) was changed to specify that the permit is valid only if the person named on the moratorium permit is the owner or operator of the vessel on which the permit is used. This change was made for clarity and consistency, because the terms ''owner'' and ''operator'' are defined in regulation at § 600.10.

3. The language governing permit transfers at § 679.4(g)(7) was revised to clarify that a permit transfer is required to reflect any change in permit ownership including the addition or subtraction of a partner.

4. Finally, paragraph 679.4(g)(9) was added to clarify for the public that scallop moratorium permits do not represent any interest that is subject to the ''takings'' provision of the U.S. Constitution. The public is advised that these permits represent a harvesting privilege that may be amended or revoked subject to the requirements of applicable Federal law.

Classification

The Regional Administrator determined that Amendment 2 is necessary for the conservation and management of the scallop fishery off Alaska and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Council prepared a final regulatory flexibility analysis as part of the regulatory impact review. The analysis concluded that economic effects of Amendment 2 could have a significant and positive impact on a substantial number of small entities. A moratorium on the entry of new vessels into the scallop fishery will help prevent further overcapitalization of the fishery and the loss of income to current participants that would result from further overcapitalization. However, it is impossible to determine how many new vessels would enter the fishery in the absence of a vessel moratorium. As a consequence, the benefits of a moratorium are impossible to quantify. The proposed rule to implement Amendment 2 was published in the **Federal Register** on December 26, 1996, and comments were invited on the IRFA. No comments were received on the IRFA. Because the economic impacts are beneficial, no efforts have been made to mitigate these effects. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0206. The new information

requirement includes an application for a moratorium permit and an application for transfer of a moratorium permit. Public reporting burden for these collections of information are estimated to be 0.33 and 0.5 hours, respectively. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: April 7, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 773 *et seq.*

2. In § 679.2, the definitions of ''Legal landing'', ''Maximum LOA'' introductory text, ''Moratorium qualification'', ''Moratorium species'', and ''Qualifying period'' are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Legal landing (applicable through June 30, 2000) means any amount of a moratorium species that was or is landed in compliance with Federal and state commercial fishing regulations in effect at the time of the landing.

* * * * *

Maximum LOA (applicable through December 31, 1998), with respect to a vessel's eligibility for a groundfish or crab moratorium permit, means:

* * * * *

Moratorium qualification (applicable through December 31, 1998) with respect to the groundfish and crab vessel moratorium program means a transferable prerequisite for a moratorium permit.

Moratorium species means:

(1) (Applicable through June 30, 2000) any scallop species.

(2) (Applicable through December 31, 1998) any moratorium crab species or moratorium groundfish species.

* * * * *

Qualifying period (applicable through December 31, 1998) with respect to the groundfish and crab vessel moratorium program means the period to qualify for the moratorium from January 1, 1988, through February 9, 1992.

* * * * *

3. In § 679.4, paragraph (c)(10)(i) is revised and a new paragraph (g) is added to read as follows:

§ 679.4 Permits.

* * * * *

(c) * * *

(10) *Appeal*—(i) *Determination*. The Chief, RAM Division, will issue an initial administrative determination to each applicant who is denied a moratorium permit by that official. An initial administrative determination may be appealed by the applicant in accordance with § 679.43. The initial administrative determination will be the final agency action if a written appeal is not received by the Regional Administrator, within the period specified at § 679.43.

* * * * *

(g) *Scallop moratorium permits* (applicable through June 30, 2000)—(1) *General*—(i) *Applicability*. Except as provided under paragraph (g)(2) of this section, any vessel used to take or retain any scallop species in Federal waters must have a valid scallop moratorium permit on board the vessel at all times when the vessel is engaged in fishing for scallops in Federal waters or has scallops taken from Federal waters retained on board. Any vessel used to take or retain scallops in Federal waters within Scallop Registration Area H must have a scallop moratorium permit endorsed for Registration Area H. Any vessel used to take or retain scallop species in Federal waters outside Registration Area H must have a scallop moratorium permit endorsed for Federal waters exclusive of Registration Area H.

(ii) *Applicable dates and duration*. The requirement to carry a moratorium permit is applicable from July 1, 1997, through June 30, 2000. A scallop moratorium permit is valid for the duration of the moratorium unless otherwise specified.

(iii) *Validity*. A scallop moratorium permit issued under this paragraph is valid only if:

(A) A person named on the moratorium permit is the owner or operator of the vessel on which the permit is used.

(B) The vessel's LOA does not exceed the maximum LOA specified on the permit.

(C) The permit has not been revoked or suspended under 15 CFR part 904.

(iv) *Inspection*. A scallop moratorium permit must be presented for inspection upon the request of any authorized officer.

(2) *Exemptions*. A vessel that has an LOA of less than or equal to 26 ft (7.9 m) in the GOA, and less than or equal to 32 ft (9.8 m) in the BSAI and that does not have dredge gear on board is exempt from the requirements of this paragraph (g) when fishing for scallops with dive gear.

(3) *Qualification criteria*—(i) *Qualifying period*. To qualify for a moratorium permit, a vessel must have made a legal landing of scallops during 1991, 1992, or 1993, or during at least 4 separate years from 1980 through 1990.

(ii) *Area endorsements*. A scallop moratorium permit may contain an area endorsement for Federal waters within Registration Area H, for Federal waters outside Registration Area H, or for both areas.

(A) *Registration Area H*. A scallop moratorium permit may be endorsed for fishing in Federal waters within Registration Area H if a qualifying vessel made a legal landing of scallops taken inside Registration Area H during the qualifying period defined at paragraph (g)(3)(i) of this section.

(B) *Waters outside Registration Area H*. A scallop moratorium permit may be endorsed for fishing in Federal waters outside Registration Area H if the qualifying vessel made a legal landing of scallops taken in waters outside Registration Area H during the qualifying period defined at paragraph (g)(3)(i) of this section.

(iii) *Legal landings*. Evidence of legal landings shall be limited to documentation of State or Federal catch reports that indicate the amount of scallops harvested, the registration area or location in which they were caught, the vessel used to catch them, and the date of harvesting, landing, or reporting.

(4) *Maximum LOA*—(i) All scallop moratorium permits will specify a maximum LOA, which will be 1.2 times the LOA of the qualifying vessel on January 20, 1993, unless the qualifying vessel was under reconstruction on January 20, 1993.

(ii) If a qualifying vessel was under reconstruction on January 20, 1993, the

maximum LOA will be the LOA on the date reconstruction was completed.

(5) *Application for permit.* A scallop moratorium permit will be issued to the person or successor in interest who was the owner of a qualifying vessel when it most recently made qualifying landings under paragraph (g)(3) of this section, if he/she submits to the Regional Administrator a complete scallop moratorium permit application that is subsequently approved. A complete application for a scallop moratorium permit must include the following information:

(i) Name(s), signature(s), business address(es), and telephone and fax numbers of the person(s) who owned the vessel when the most recent qualifying landing of scallops occurred.

(ii) Name of the qualifying vessel, state registration number of the vessel and the USCG number of the vessel, if any.

(iii) Valid documentation of the vessel's basis for moratorium qualification, if requested by the Regional Administrator due to an absence of landings records for the vessel for the qualifying period.

(iv) Reliable documentation of the vessel's qualifying LOA, if requested by the Regional Administrator, such as a vessel survey, builder's plan, state or Federal registration certificate, or other reliable and probative documents that clearly identify the vessel and its LOA and that are dated on or before January 20, 1993.

(v) Name(s) and signature(s) of the person(s) who is/are the owner(s) of the vessel or the person(s) responsible for representing the vessel owner.

(vi) If the qualifying vessel was under reconstruction on January 20, 1993, the permit application must contain the following additional information:

(A) A legible copy of written contracts or written agreements with the firm that performed reconstruction of the vessel and that relate to that reconstruction.

(B) An affidavit signed by the vessel owner(s) and the owner/manager of the firm that performed the reconstruction specifying the beginning and ending dates of the reconstruction.

(C) An affidavit signed by the vessel owner(s) specifying the LOA of the reconstructed vessel.

(6) *Vessel ownership.* Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(i) For vessels required to be documented under the laws of the United States, the USCG abstract of title issued in respect to that vessel.

(ii) A certificate of registration that is determinative as to vessel ownership.

(iii) A bill of sale.

(7) *Permit transfer*—(i) *Applicability.* A moratorium permit transfer is required to effect any change in permit ownership including the addition or subtraction of partners. Area endorsements may not be transferred independently of a moratorium permit.

(ii) *Required information.* A complete application for approval of transfer of a scallop moratorium permit must include the following:

(A) The original moratorium permit to be transferred.

(B) Name(s), business address(es), and telephone and fax numbers of the applicant(s) including the holders of the scallop moratorium permit that is to be transferred and the person(s) who is to receive the transferred scallop moratorium permit.

(C) Name(s) and signature(s) of the person(s) from whom the moratorium permit would be transferred or their representative, and the person(s) who would receive the transferred moratorium permit or their representative.

(D) A legible copy of a contract or agreement to transfer the moratorium permit in question must be included with the application for transfer that specifies the person(s) from whom the scallop moratorium permit is to be transferred, the date of the transfer agreement, name(s) and signature(s) of the current holder(s) of the permit, and name(s) and signature(s) of person(s) to whom the scallop moratorium permit is to be transferred.

(8) *Appeal*—(i) *Determination.* The Chief, RAM Division, will issue an initial administrative determination to an applicant upon denial of a scallop moratorium permit by that official. An initial administrative determination may be appealed by the applicant in accordance with § 679.43. The initial administrative determination will be the final agency action if a written appeal is not received by the Regional Administrator postmarked within the period specified at § 679.43.

(ii) *Permit denial.* An initial administrative determination that denies an application for a scallop moratorium permit may authorize the affected person to take or retain scallops. Any administrative determination that authorizes fishing will expire on the effective date of the final agency action relating to the application.

(iii) *Final action.* An administrative determination denying the issuance of a scallop moratorium permit is the final agency action for purposes of judicial review.

(9) *Harvesting privilege.* Scallop moratorium permits issued pursuant to this part do not represent an interest that is subject to the ''takings'' provision of the 5th Amendment to the U.S. Constitution. Rather, such permits represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable laws.

4. In § 679.43, paragraph (a) is revised to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under this subpart as well as § 679.4(c), § 679.4(g), and portions of subpart C of this part that apply to the halibut and sablefish CDQ program.

* * * * *

[FR Doc. 97–9433 Filed 4–10–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961119321–7071–02; I.D. 110796G]

RIN 0648–AI68

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

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

ACTION: Final rule.

SUMMARY: NMFS is revising several sections of regulations that pertain to permits, recordkeeping, and reporting for the groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska. These changes are necessary to clarify existing text, facilitate management of the fisheries, promote compliance with regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the fishery management plans (FMPs) for the fisheries of the EEZ off Alaska.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the EEZ off Alaska under

authority of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. These FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H of 50 CFR part 600. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

A proposed rule to revise regulations that implement permit and recordkeeping and reporting requirements for the Alaska groundfish fisheries was published in the **Federal Register** on December 23, 1996 (61 FR 67524). A description of these revisions and the justification for them is presented in the preamble to the proposed rule. Public comment on the proposed rule was invited through January 22, 1997. NMFS received 4 letters containing 11 comments, which are summarized and responded to below under Response to Comments.

Changes to the Final Rule from the Proposed Rule

The final rule includes the following changes from the proposed rule:

1. The proposed rule had added a new definition of ''fishing trip'' at § 679.2 for purposes of catcher vessel and mothership logbook requirements. The intent of this logbook trip designation was to record trip numbers that could be correlated with observer trips to enable more effective cross-checking of observer and logbook data. Since the proposed rule was published, increased confusion has occurred due to the number of different uses or definitions of the term ''fishing trip.'' In view of this confusion, NMFS has reassessed the need to add a fourth definition of ''fishing trip'' and has removed it from the final rule.

2. In § 679.5, paragraph (a)(2) is revised to clarify the applicability of recordkeeping and reporting requirements to shoreside processors and vessels operating solely as a mothership in Alaska State waters to maintain consistency with requirements for a Federal processor permit.

3. In § 679.5, paragraph (d)(2) is corrected to read ''operator or manager'' to be consistent with other parts of the regulations pertaining to buying stations, which may be either a vessel or a land-based operation.

4. In § 679.5, paragraph (c)(3)(ii)(D) is revised to clarify that estimated total round fish weight may be recorded to either the nearest lb or mt.

5. In § 679.5, paragraph (a)(10) is revised to change NMFS' approach to discard reporting in response to Comment 1. NMFS will require ''best estimate practicable to the nearest 0.001 mt'' of discards rather than absolute quantities. Under this approach, the processor would estimate discard amounts in either number of fish (for Pacific salmon, Pacific halibut, steelhead trout, king crab, and Tanner crab) or the weight of fish (for groundfish and Pacific herring). Many processors rely on observers sampling calculations of discard, which are based on estimated catch weights, to record their discards. Currently NMFS does not require scales on board processor vessels or weighing of discards, although NMFS and the Council are interested in pursuing scale weight requirements for retained and discarded catch in the near future.

Response to Comments

Comment 1. Recording species product and discard weights to the nearest 0.001 mt in a daily cumulative production logbook (DCPL) and weekly production report (WPR) requires an impossible level of accuracy, especially for discards. In fact, vessel estimated catch weights (to the nearest mt) often are used by observers to derive estimated discard amounts.

Response. The assumption for calculation of species product weight is that products can be and are weighed by processors to the 0.001 mt level. Accurate groundfish product weight is currently available in the fishing industry as part of everyday business, and NMFS assumes that operators/managers will use the best information available in recording this information. NMFS acknowledges that reporting of accurate discard amounts to 0.001 mt is not feasible for most processors. Therefore, NMFS will require reporting of discards to be the ''best estimate practicable to the nearest 0.001 mt'' of discards rather than absolute quantities. The requirement to provide species product and discard weights to the nearest 0.001 mt is necessary to monitor and manage harvests of species with small quotas (see response to Comment 4).

Comment 2. Recording product and discard weights to the nearest 0.001 mt will require that a company's vessel and programming staff spend considerable time to rewrite the company's software supporting production, discard, and electronic reporting systems to accommodate the extra decimal point; the upgrade of vessel software, particularly if the vessel is at sea, has the potential to run into the thousands of dollars.

Response. NMFS provides logbooks and forms to the fishing industry free-of-charge for purposes of recordkeeping and reporting. Although NMFS endorses independent development of software to facilitate timely and efficient submission of reports, NMFS' approval of a processor's electronic submission of required reports does not limit NMFS' ability to revise the recordkeeping and reporting requirements. NMFS recognizes that there is a cost to upgrade company software. However, NMFS believes the benefit to industry of the resulting increased accuracy of inseason quota management actions, without the time required to complete or process the forms or the frequency of submittal due to the actions of the respondents, justifies this cost.

Comment 3. Reporting to the nearest kg will help harmonize the NMFS reporting requirements with the State of Alaska landing tax, thus making the NMFS reports more useful in calculating the tax assessment.

Response. NMFS agrees, although facilitating recordkeeping and reporting for purposes of the Alaska State landing tax was not the purpose of the proposed changes to the Federal recordkeeping and reporting program.

Comment 4. It seems misleading to seek the precision of measuring to the nearest billionth of unit of the total cap of 2,000,000 mt as an enhancement of the scientific management or conservation goals of the Magnuson-Stevens Act.

Response. Concern exists over NMFS' ability to manage relatively small quotas specified for several groundfish species, e.g., rockfish, such that even small amounts of these species must be accounted for to avoid overharvesting quotas and prevent overfishing. This change would allow NMFS to obtain more accurate catch data from processors receiving small amounts of these species.

Comment 5. The 1997 catcher vessel daily fishing logbook (DFL) and the catcher/processor DCPL pages do not contain enough room to record the retained and discarded amounts of the variety of species caught.

Response. To accommodate information necessary to enforce the Individual Fishing Quota (IFQ) Program, NMFS reduced the space available on the vessel logbook sheets to record species information. NMFS will address this constraint in the 1998 logbook format.

Comment 6. The 1997 catcher vessel DFL and catcher/processor DCPL have a

reduced number of lines for haul data on each page; this will result in a significant increase in the number of logbooks used in 1997 compared with prior years.

Response. To accommodate the addition of IFQ information on each page, NMFS removed some rows previously used to record haul data. NMFS will address this constraint in the 1998 logbook format.

Comment 7. The 1997 catcher vessel DFL and catcher/processor DCPL indicate pages are to be numbered as ''page __ of __'', but no information is provided on how the second number is to be determined.

Response. NMFS agrees. The fishing industry is advised to disregard the ''of __'' portion of this designation and to number the pages consecutively beginning with page one and continuing throughout the logbook for the remainder of the fishing year, per the regulations. This format error will be corrected in the 1998 logbook format.

Comment 8. The 1997 catcher vessel DFL and catcher/processor DCPL do not provide a space to record the ''date'' on each page.

Response. NMFS agrees. The fishing industry is advised to enter the daily date on each page at the bottom of the vessel name field. This format error will be corrected in 1998 logbooks.

Comment 9. In the 1997 catcher vessel DFL and catcher/processor DCPL, the logbook field previously identified as ''number of observers onboard'' has been changed to ''observer onboard—yes or no''; this makes it difficult to indicate when there is one or more observers onboard.

Response. NMFS agrees. The fishing industry is advised to write the number of observers aboard (''0'', ''1'', or ''2'') over the Observer Onboard YES/NO box. This format error will be corrected in the 1998 logbooks.

Comment 10. In the Discard/Donate section of the catcher/processor DCPL, it seems that the words ''cumulative total since last delivery'' are inappropriate.

Response. NMFS agrees. The fishing industry is advised to enter the words in the Discard/Donate section, ''Weekly cumulative total'' in place of ''cumulative total since last delivery'' and summarize discards at the end of each weekly reporting period. This format error will be corrected in the 1998 logbooks.

Comment 11. The catcher vessel instruction manual states that estimated round catch weight be recorded to the nearest 0.001 mt. An estimate of this accuracy is not possible.

Response. NMFS agrees. Estimated round catch weight may be recorded either to the nearest lb or mt, whichever the vessel operator believes most appropriate. A revised catcher vessel instruction manual will be issued in 1997 to correct this error. In regulations, § 679.5(c)(3)(ii)(D) is revised accordingly.

Classification

The Administrator, Alaska Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the GOA and BSAI management area fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the proposed rule (61 FR 67525, December 23, 1996). No comments were received regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

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

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collections of information have been approved by the Office of Management and Budget (OMB), OMB Control Numbers 0648–0206 and 0648–0213.

a. *Approved under 0648–0206—Alaska permits*. There are no new forms or revisions to forms; renewal cycle for Federal fisheries permit and Federal processor permit is extended from 1 to 3 years. The information collection requirements for the Federal processor permit are repeated in this rule and have an estimated response time of 0.33 hour per response.

b. *Approved under 0648–0213—Alaska Region Logbook Family of Forms*: Revisions to existing forms have the following effects: Estimated time for the operator of a catcher vessel with fixed gear to complete a DFL increases from 0.25 hour per response to 0.33 hour per response; estimated time for the operator of a catcher/processor with fixed gear to complete a catcher/processor DCPL increases from 0.45 hour per response to 0.53 hour per response; estimated time for the operator of a catcher vessel with gear other than fixed gear to complete a DFL increases from 0.25 hour per response to 0.28 hour per response; estimated time for the operator of a catcher/processor with gear other than fixed gear to complete a catcher/processor DCPL increases from 0.45 hour per response to 0.48 hour per response. The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection-of-information.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the PRA unless that collection-of-information displays a currently valid OMB control number.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

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

List of Subjects in 50 CFR 679

Fisheries, Reporting and recordkeeping requirements.

Dated: April 7, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679––FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.2, the definition for ''fish product weight'' is revised to read as follows:

§ 679.2 Definitions.

* * * * *

Fish product weight means the weight of the fish product in pounds or to at least the nearest thousandth of a metric ton (0.001 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individual fresh or frozen fish. The weight of a production unit is the average weight of representative samples of the product, and, for fish other than fresh fish, may include additives or water but not packaging. Any allowance for water added cannot exceed 5 percent of the gross product weight (fish, additives, and water).

* * * * *

3. In § 679.4, paragraphs (b)(4)(i) and (f) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(4) *Duration*. (i) A Federal fisheries permit is issued on a 3-year cycle and is in effect from the date of issuance through the end of the current NMFS 3-year cycle, unless it is revoked, suspended, or modified under § 600.735 or § 600.740 of this chapter.

* * * * *

(f) *Federal processor permit*—(1) *Requirement*. No shoreside processor of the United States or vessel of the United States operating solely as a mothership in Alaska States waters may receive or process groundfish harvested in the GOA or BSAI, unless the owner first obtains a Federal processor permit issued under this part. A Federal processor permit is issued without charge.

(2) *Application*. A complete application for a Federal processor permit must include the following:

(i) If the application is for an amended permit, the current Federal processor permit number and an update of the permit information that has changed.

(ii) The shoreside processor's name, business street address, telephone number, and fax number.

(iii) The shoreside processor owner's name or names, business mailing address, managing company, if any, telephone number, ADF&G Processor Code, and fax number.

(iv) Indication of the fishery or fisheries for which the permit is requested.

(v) Indication of the shoreside processor operations category.

(vi) The owner of the shoreside processor must sign and date the application.

(3) *Issuance*. (i) Upon receipt of a properly completed permit application, the Regional Administrator will issue a Federal processor permit required by this paragraph (f).

(ii) The Regional Administrator will send the Federal processor permit to the applicant with the shoreside processor logbook, as provided under § 679.5.

(4) *Duration*. (i) A Federal processor permit is issued for a 3-year period and remains in full force and effect from the date of issuance through the end of the current NMFS 3-year renewal cycle, unless it is revoked, suspended, or modified under § 600.735 or § 600.740 of this chapter.

(ii) A Federal processor permit is surrendered when the original permit is submitted to and received by the Chief, RAM Division, NMFS.

(5) *Transfer*. A Federal processor permit issued under this paragraph (f) is not transferable or assignable and is valid only for the processor for which it is issued.

(6) *Inspection*. (i) An original Federal processor permit issued under this paragraph (f) must be on site at the shoreside processor at all times. Photocopied or faxed copies are not considered originals.

(ii) A permit issued under this paragraph (f) must be presented for inspection upon the request of any authorized officer.

4. In § 679.5, the reference to ''0.01 mt'' is revised to read ''0.001 mt'' in the following paragraphs: (a)(6)(iii)(H), (a)(8)(ii)(A), (a)(9)(ii), (a)(10)(i)(A), (f)(2)(ii)(E), (g)(3)(iii)(E), (g)(3)(iv), (h)(3)(iv), and (k)(2)(ii)(C); paragraphs (a)(2), (a)(5)(iii) and (iv), (a)(10)(i)(A) and (B), (c)(3)(i) introductory text, (c)(3)(i)(B) through (D), (c)(3)(ii)(A) and (D), the introductory text of paragraphs (d)(2)(i), (e)(2)(i), and (f)(2)(i), and paragraph headings for (c)(3)(iv) and (c)(3)(v) are revised; and paragraphs (c)(3)(iii)(A) and (B) and (c)(3)(vi) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) * * *

(2) *Applicability, Federal processor permit*. Any shoreside processor or vessel operating solely as a mothership in Alaska State waters that retains groundfish is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

* * * * *

(5) * * *

(iii) If a shoreside processor, the Federal processor permit number and ADF&G processor number.

(iv) If a buying station, the name and ADF&G vessel number (if a vessel) of the buying station; the name, ADF&G processor code, and Federal processor permit number of associated shoreside processor or the Federal fisheries permit number of the associated mothership.

* * * * *

(10) * * *

(i) * * *

(A) The operator or manager must record and report discards and donations by species codes and discard product codes as defined in Tables 1 and 2 of this part for each gear type, CDQ number, and reporting area, whether in Alaska State waters or Federal waters.

(B) If there were no discards or donations, write ''NO DISCARDS'', ''0'', or ''ZERO'' for that day.

* * * * *

(ii) *Catcher vessel discards/donations*. (A) The operator must record in the DFL each day on the day discards and donations as follows:

(*1*) The estimated daily total, balance brought forward, and cumulative total estimated round fish weight for each discard or donation of groundfish species, groundfish species groups, and Pacific herring in lb, or to at least the nearest 0.001 mt.

(*2*) The estimated daily total, balance brought forward, and cumulative total estimated numbers for each discard and donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

(B) For deliveries of unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue logsheet (discards copy) for that delivery. The operator must check the box entitled ''unsorted codend,'' and the blue DFL logsheet (discards copy) remains in the DFL.

(C) For presorted deliveries or in the event a catcher vessel has ''bled'' a codend prior to delivery to a processor, the operator must check the ''presorted delivery'' box, enter the estimated amount of discards or donations by species, and submit with each harvest delivery the blue DFL logsheet (discards copy) to the mothership, buying station, or shoreside processor.

(iii) *Buying station discards/donations*. (A) The operator or manager must record in the DCL on a daily basis, all estimated discards or donations that:

(*1*) Are reported by a catcher vessel delivering groundfish to the buying station;

(*2*) Occur after receipt of harvest from a catcher vessel; and

(*3*) Occur prior to delivery of harvest to a mothership or shoreside processor.

(B) The operator or manager must record in the DCL each day on the day discards and donations occur:

(*1*) Estimated daily total, balance brought forward, and cumulative total estimated round fish weight for each discard or donation of groundfish species, groundfish species groups, and Pacific herring in pounds, or to at least the nearest 0.001 mt.

(*2*) Estimated daily total, balance brought forward, and cumulative total estimated numbers for each discard and donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

(C) If a blue DFL logsheet submitted to the buying station from a catcher vessel contains reports of discards or donations, the operator or manager of a buying station must record in the DCL the discards and donations on the day the DFL logsheet is received from the catcher vessel.

(iv) *Catcher/processor discards/donations*. The operator of a catcher/processor must record in the DCPL each day on the day discards or donations occur, as follows:

(A) All discards or donations that occur prior to harvest, during harvest, and during processing.

(B) The estimated daily total, balance brought forward, and cumulative total estimated round fish weight for each discard or donation of groundfish species, groundfish species groups, and Pacific herring in pounds, or to at least the nearest 0.001 mt.

(C) The estimated daily total, balance brought forward, and cumulative total estimated numbers for each discard and donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

(v) *Mothership or shoreside processor discards/donations*. (A) The operator of a mothership or manager of a shoreside processor must record in the DCPL each day on the day discards or donations occur that:

(*1*) Are reported on a blue DFL logsheet by a catcher vessel delivering groundfish to the mothership or shoreside processor.

(*2*) Occur on site after receipt of groundfish from a catcher vessel.

(*3*) Occur during processing of groundfish.

(B) The operator of a mothership or manager of a shoreside processor must record in the DCPL:

(*1*) The estimated daily total, balance brought forward, and cumulative total estimated round fish weight for each discard or donation of groundfish species, groundfish species groups, and Pacific herring in pounds, or to at least the nearest 0.001 mt.

(*2*) The estimated daily total, balance brought forward, and cumulative total estimated numbers for each discard and donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

(C) If an unsorted codend is received from a catcher vessel, the catcher vessel is not required to submit a blue discard logsheet to the mothership or shoreside processor. The operator of a mothership or manager of a shoreside processor must sort the catch received from the unsorted codends and must record the discards by species in the DCPL as discard at sea on the day the harvest is received from the catcher vessel.

(D) If discards are reported on a blue DFL logsheet from a catcher vessel delivering a presorted codend or if a catcher vessel reports an amount bled at sea, the operator of a mothership or manager of a shoreside processor must record in the DCPL the discards on the day the DFL logsheet is received from the catcher vessel.

(E) If a yellow DCL logsheet is received from a buying station and discards or donations are reported, the operator of a mothership or manager of a shoreside processor must record in the DCPL the discards or donations on the day the DCL logsheet is received from the buying station.

* * * * *

(c) * * *

(3) *Information required*—(i) *General*. In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or catcher/processor must record on each page:

* * * * *

(B) The start date, end date, and trip number of the fishing trip.

(C) If a catcher vessel, the vessel name, ADF&G vessel registration number, and Federal fisheries permit number.

(D) If a catcher/processor, the vessel name, ADF&G processor code, and Federal fisheries permit number.

* * * * *

(ii) * * *

(A) If a catcher vessel, date (month-day-year).

* * * * *

(D) The estimated total round fish weight of the groundfish catch to the nearest lb or mt.

* * * * *

(iii) * * *

(A) *Catcher vessels*. (*1*) If deliveries to a mothership or shoreside processor are unsorted codends, the operator must check the appropriate box.

(*2*) If deliveries to a mothership or shoreside processor are presorted at sea, the operator must check the appropriate box and must record discard/donation information as described in paragraph (a)(10) of this section.

(B) *Catcher/processors*. The operator must record discard/donation information as described in paragraph (a)(10) of this section.

(iv) *Catcher vessel delivery information*. * * *

(v) *Catcher/processor product information*. * * *

(vi) *IFQ data*. The operator of a catcher vessel or catcher/processor must record IFQ information as follows:

(A) Check YES or NO to indicate if persons aboard have authorized IFQ permits.

(B) If YES, record the following:

(*1*) Vessel operator's (captain's) name and IFQ permit number, if any.

(*2*) The name of each IFQ holder aboard the vessel and each holder's IFQ permit number.

(*3*) Month and day of landing.

(*4*) Name of registered buyer.

(*5*) Name of unloading port.

(d) * * *

(2) *Information required*—(i) *General*. In addition to requirements described in paragraphs (a) and (b) of this section, the operator or manager of a buying station must record on each page:

* * * * *

(e) * * *

(2) *Information required*—(i) *General*. In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership must record on each page:

* * * * *

(f) * * *

(2) *Information required*—(i) *Part IA*. In addition to requirements described in paragraphs (a) and (b) of this section, the manager of a shoreside processor must record on each page:

* * * * *

[FR Doc. 97–9390 Filed 4–10–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 70
Friday, April 11, 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

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

RIN 0563–AA79

General Crop Insurance Regulations, Safflower Seed Crop Insurance Endorsement; and Common Crop Insurance Regulations, Safflower Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of safflower. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current safflower seed crop endorsement in the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Safflower Seed Crop Insurance Endorsement to the 1997 and prior crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business May 12, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development Division, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Safflower Crop Insurance Provisions.'' The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of safflower that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

FCIC is requesting comments on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

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. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous

years production if adequate records are available to support the certification, or receive a transitional yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require 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 No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicate regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.125, Safflower Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring safflower found at 7 CFR 401.123 (Safflower Seed Crop Endorsement). FCIC also proposes to amend 7 CFR 401.123 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve Sec. 401.123.

This rule makes minor editorial and format changes to improve the Safflower Seed Crop Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring safflower as follows:

1. The name of the crop provision was shortened from ''Safflower Seed'' to ''Safflower''. Safflower can be used in either a singular or plural context. Changing the name of the crop provisions from ''safflower seed'' to ''safflower'' removes any confusion with policies that use the word ''seed'' in their title and insure the production of seed for planting in a future year. Also, the Late Planting Agreement Option, that is applicable to Safflower provisions found at 7 CFR 401.123, no longer applies. Both Late Planting and Prevented Planting provisions for safflower will be proposed in a separate rule.

2. Section 1—Add definitions for the terms ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''local market price,'' ''nurse crop (companion crop),'' ''planted acreage,'' ''pounds,'' ''practical to replant,'' ''production guarantee (per acre),'' ''replanting,'' and ''written agreement'' for clarification. Also, amend the definition of ''value per pound of damaged safflower''. It now reads, ''The price per pound for damaged safflower offered by buyers in the area in which you normally market safflower''. A floor of 50 percent of the average market price was previously used for computing safflower losses because of limited market outlets. There are now sufficient markets available to provide a valid price for damaged safflower production, so the 50 percent floor has been removed.

3. Section 2—Expand unit division provisions to include insured reporting responsibilities to qualify for optional units. Section 2(e)(4)(ii) clarifies unit division for non-irrigated corners of center pivot irrigation systems.

4. Section 3—Clarify that an insured may select only one price election for all the safflower in the county as designated in the Special Provisions.

5. Section 5—Change the cancellation and termination dates to be 30 days earlier than in the previous safflower crop insurance endorsement for states other than California. This change is intended to reduce program vulnerabilities that may exist under current program dates by reducing the opportunity for insureds to anticipate below-normal yields. The change also corresponds with the change to the sales closing date which has been moved back 30 days to comply with the Federal Crop Insurance Reform Act of 1994.

6. Section 6—Prohibit interplanting safflower with another crop, or planting safflower into an established grass or legume, unless allowed by Special Provisions or by written agreement.

7. Section 9—Clarify that any losses caused by insufficient or improper application of pest control or disease control measures are not an insured cause of loss.

8. Section 10—Allow producers to receive a replant payment. This is consistent with many other annual crops converted to the Common Policy and provides additional incentives to insured to make every effort to produce a crop.

9. Section 11—The representative samples of unharvested safflower must not be harvested or destroyed until the earlier of inspection or 15 days after harvest of the balance of the unit is completed.

10. Section 12(a)—Clarify determining loss on a unit basis and requirements of production records.

11. Section 12(c)—Clarify how to determine total production to count from all insurable acreage.

12. Section 12(d)—Clarify when production qualifies for quality adjustment by adding a provision that clarifies when quality will be a factor in determining the loss.

13. Section 12(d)(4)—Remove the language that limited quality adjustment to not less than 50 percent of the market price.

14. Section 13—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for and duration of written agreements.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Safflower, Safflower seed crop endorsement.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance

Corporation hereby proposes to revise 7 CFR Parts 401 and 457, as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

Section 401.8 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 401.8 The application and policy.

* * * * *

(d) The application for the 1988 and succeeding crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37 and 400.38). The provisions of the Safflower Insurance Policy for the 1988 through 1997 crop years are as follows:

§ 401.123 [Amended]

3. In § 401.123 the introductory paragraph is revised to read as follows: The provisions of the Safflower Seed Crop Insurance Endorsement for the 1988 through the 1997 crop year.

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

5. Section 457.125 is added to read as follows:

§ 457.125 Safflower crop insurance provisions.

The Safflower Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

SAFFLOWER CROP INSURANCE PROVISIONS

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Days—Calendar days.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Collecting the safflower seed by combining or threshing.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Local market price—The cash price per pound for undamaged safflower (test weight of 35 pounds per bushel or higher and seed damage less than 25 percent) offered by buyers in the area in which you normally market the insured crop.

Nurse crop (companion crop)—A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Safflower must initially be planted in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Pound—Sixteen ounces avoirdupois.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

Production guarantee (per acre)—The number of pounds determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Replanting—Performing the cultural practices necessary to replace the safflower seed and then replacing the safflower seed in the insured acreage with the expectation of growing a successful crop.

Value per pound of damaged safflower—The cash price per pound for damaged safflower (test weight below 35 pounds per bushel or seed damage in excess of 25 percent) offered by buyers in the area in which you normally market safflower.

Written agreement—A written document that alters designated terms of this policy in accordance with section 13.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), a basic unit may be divided into optional units if, for each optional unit you meet all the conditions of this section, or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to, Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In

addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage and non-irrigated acreage (in those counties where ''non-irrigated'' practice is allowed in the actuarial table) if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. Non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all other requirements of this section are met.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the safflower in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each safflower type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date for California, and December 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State	Cancellation and termination dates
California	December 31.
All other states	March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all safflower in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is planted for harvest as safflower;

(c) That is not (unless allowed by the Special Provisions or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), we will not insure:

(a) Safflower planted on land on which safflower, sunflower seed, any variety of dry beans, soybeans, mustard, rapeseed, or lentils were grown the preceding crop year, unless other rotation requirements are specified in the Special Provisions or we agree in writing to insure such acreage; or

(b) Any acreage of safflower damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, unless the crop is replanted or we agree that it is not practical to replant.

8. Insurance Period

In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is October 31 immediately following planting.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

10. Replanting Payment

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 160 pounds, multiplied by your price election, multiplied by your insured share.

(c) When safflower is replanted using a practice that is uninsurable as an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type if applicable, (see section 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the total from the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time

harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature safflower may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 8 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if such production:

(i) Has a test weight below 35 pounds per bushel;

(ii) Has seed damage in excess of 25 percent; or

(iii) Contains substances or conditions that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and that occurred within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade safflower under the authority of the Agricultural Marketing Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Safflower production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced as follows:

(i) In accordance with the qualifying adjustment factor provisions contained in the Special Provisions; or

(ii) If quality adjustment factor provisions are not contained in the Special Provisions:

(A) Determine the value per pound of damaged safflower and the local market price of undamaged safflower on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. Discounts used to establish the net price of the damaged production will be limited to those which are usual, customary, and reasonable. The price will not be reduced for:

(*1*) Moisture content;

(*2*) Damage due to uninsured causes; or

(*3*) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of safflower. (We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the production to those buyers.)

(B) Divide the price per pound of damaged safflower by the local market price per pound of undamaged safflower to determine the quality adjustment factor; and

(C) Multiply the adjustment factor by the number of pounds of the damaged production remaining after any reduction due to excessive moisture to determine the net production to count.

(e) Any production harvested from other plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved by us, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on April 4, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–9421 Filed 4–10–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–022]

RIN 2115–AE47

Drawbridge Operation Regulations; Manchester Harbor, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for the Massachusetts Bay Transportation Authority (MBTA) Bridge (formerly the Boston and Maine railroad bridge), over Manchester Harbor, in Manchester, Massachusetts. The mariners located upstream of the bridge and the Manchester Harbormaster have requested longer operating hours during the boating season. This proposed change would require the bridge to be crewed for eight additional hours each day from Memorial Day through the end of September.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York, N.Y. 10004–5073. The telephone number is (212) 668–7165. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Supervisory Bridge Management Specialist, (212) 668–7069.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–97–022), the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this

rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Good cause exists for a comment period of less than 60 days. The public has had various opportunities to comment on the regulations for this bridge. All comments received in response to the 1996 temporary final rule with request for comments were considered in drafting this NPRM. A longer comment period is unnecessary and contrary to the public interest due to the need to have a final regulation in place prior to Memorial Day, 1997.

The Manchester MBTA Bridge was formerly owned and operated by the Boston and Maine Railroad (B&M). The current owner of the bridge is the Massachusetts Bay Transportation Authority (MBTA). The existing operating regulations at 33 CFR 117.603 require that the bridge be crewed from 1 April through 1 November from 9 a.m. to 6 p.m., with a one hour lunch closure between 1 p.m. and 2 p.m. daily.

The Coast Guard received a request in May, 1994, from the Manchester Harbormaster/Chief of Police and several mariners located upstream of the bridge to extend the hours that the Manchester MBTA Bridge is crewed during the peak boating season. On June 14, 1994, the Coast Guard published a temporary (90 day) deviation from the operating regulations to evaluate changes to the operating rules during the 1994 boating season (59 FR 30524; June 14, 1994). The temporary deviation extended the hours that the bridge was crewed by an additional five hours a day, from June 3 through August 31, 1994. It required the bridge to be crewed from 8 a.m. to 9 p.m. daily and eliminated the one hour lunch hour closure from 1 p.m. to 2 p.m. each day.

The Coast Guard received only one letter during the comment period that closed October 31, 1994. The MBTA, the bridge owner, opposed the proposal to extend the operating hours of the bridge. Their objection was based upon the additional cost of $16,000 to crew the bridge during the deviation period. The Coast Guard requested additional data and actual copies of the bridge logs to analyze the impact of the deviation. The MBTA did not provide the requested data.

The Coast Guard did not proceed with a permanent change to the regulations immediately after the temporary deviation expired since only one comment letter was received within the comment period. The mariners who originally requested the changes to the operating rules did not provide comments until March 15, 1995, well after the comment period for the temporary deviation ended. These comments included seven petition letters, one letter representing forty-five boat owners located upstream of the bridge at the Manchester Harbor Marina, and one letter from the Manchester Harbormaster/Chief of Police. All these letters were in favor of increasing the operating hours for the bridge.

During the summer of 1995, the Coast Guard implemented a temporary final rule (60 FR 36357; July 17, 1995) which tested an operating schedule from July 17, 1995, through September 30, 1995, which increased the period that the bridge opened on signal by three hours from 6 p.m. to 9 p.m. After the test period ended, the Coast Guard received 20 letters from mariners. Three petitions with a total of 40 signatures, a letter from Manchester Harbor Marina, and a letter from the Manchester Harbor Boat Club with 200 members were received requesting that the operating rules be changed to require the bridge to open on signal from 7 a.m. to 11 p.m. each day, Memorial Day through the end of September. The mariners requested the extended bridge operating hours so that they could get underway earlier in the morning and also be able to return to their moorings after their evening racing or sailing. One letter requesting that the hours remain unchanged was received from the bridge owner, the MBTA. The MBTA objected to the extra operating hours based upon a $27,000 additional cost to crew the bridge during the 1995 test period. As in 1994, copies of the bridge logs were not submitted by the bridge owner as requested by the Coast Guard.

During the summer of 1996, the Coast Guard implemented a temporary final rule which tested an operating schedule requiring the bridge to open on signal from 7 a.m. to 11 p.m. each day, Memorial Day through the end of September 1996 (61 FR 18946; April 30, 1996). The temporary final rule requested public comment on the operating hours effective for the summer of 1996. On May 7, 1996, the Coast Guard sent a letter to the MBTA requiring them to post a sign summarizing the temporary regulations and maintain a bridge log for the 1996 test period. The MBTA was also requested to provide bridge logs and operating cost data to the Coast Guard no later than October 31, 1996, for consideration of impacts upon the MBTA. The Coast Guard received one letter from a mariner in favor of the temporary regulation. A review of the bridge logs provided by MBTA for the test period revealed an average of 247 additional openings per month for the hours 7 a.m. to 9 a.m., 1 p.m. to 2 p.m., and 6 p.m. to 11 p.m. during June, July and August 1996. Thirty-five additional openings during these hours were logged for September, 1996. The MBTA submitted a letter indicating an additional operating cost of $41,459 for the period May 30 to September 30, 1996.

Discussion of Proposed Amendments

Upon review of all the comments, the Coast Guard believes that the operating hours for the bridge should be changed. The mariners specifically requested that the bridge be crewed from 7 a.m. to 11 p.m. each day during the prime boating season, Memorial Day through the end of September. This proposal will amend § 117.603 to require the bridge to open on signal between 7 a.m. and 11 p.m. from Memorial Day through September 30 each year. The hours that the bridge is crewed from April 1 to Memorial Day and from October 1 through November 1 would remain 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m.

The Coast Guard's policy is to assure that drawbridges are operated in such a manner that they are a minimum obstruction to waterway traffic while at the same time providing for the reasonable needs of land traffic. Drawbridges shall be operated under such rules and regulations as are in the overall public interest by pursuing balanced opening schedules. Under the existing operating rules for the Manchester MBTA Bridge, the needs of navigation are clearly not being satisfied as evidenced by the comments from the mariners and the results of the 1996 temporary deviation. The Coast Guard believes the proposed changes in operating hours will allow the mariners to enjoy the prime boating season, best serve the public interest and still provide for the reasonable needs of land traffic. The Coast Guard believes the benefits to the mariners justify the extra costs of crewing the bridge. The proposed hours will allow mariners to depart earlier and return later. The existing hours do not meet the needs of navigation as a result of the bridge closing at 6 p.m. during the boating season. Previously, mariners were forced either to return early after sailing or tie up at locations outside of the bridge (and the inner harbor where their moorings are located) if they returned after 6 p.m. That was an unreasonable schedule because most of the mariners work during the day and would like to use their vessels in the evenings. Additionally, the harbormaster indicated that the increased operating

hours would allow for a faster response by the Manchester-by-the Sea Police Department located downstream of the bridge to vessels in the inner harbor in the event of an emergency.

The Coast Guard proposes to simplify the advance notice requirements of the existing regulations by establishing a four hour advance notice requirement during all periods other than those when the bridge must open on signal.

The Coast Guard has determined that clearance gauges are necessary for the safety of navigation. The proposed rule requires the bridge owner to post and maintain clearance gauges to assist mariners in transiting the bridge during periods when the draw is not crewed and to reduce unnecessary openings.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation while providing for the reasonable needs of land transportation. This proposal adopts the operating hours which the Coast Guard believes to be appropriate based on the previous test periods. The Coast Guard believes the proposal achieves the government purpose of balancing the navigational rights of recreational boaters and the needs of land based transportation.

Small Entities

The Coast Guard has considered the economic impact of this rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the reasons discussed in the Background and Purpose and Regulatory Evaluation sections above the Coast Guard has determined that this rule will not affect a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, (as revised by 60 FR 32197; June 20, 1995), this rule promulgates operating regulations for drawbridges and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

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

PART 117—[AMENDED]

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

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

2. Section 117.603 is revised to read as follows:

§ 117.603 Manchester Harbor.

The Massachusetts Bay Transportation Authority Bridge at mile 1.0, in Manchester, shall operate as follows:

(a) The draw shall open on signal:

(1) From Memorial Day through September 30 from 7 a.m. to 11 p.m.;

(2) April 1 to Memorial Day and October 1 to November 1 from 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m.

(b) At all other times, the draw shall open on signal with at least four hours notice.

(c) The owner of this bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of section 118.160.

Dated: March 28, 1997.

J.L. Linnon,

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

[FR Doc. 97–9247 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–97–016]

RIN 2115–AA97

Safety Zone: Fleet Week 1997 Parade of Ships, Port of New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary moving safety zone for the Fleet Week 1997 Parade of Ships, from 7:30 a.m. until 5:30 p.m. on May 21, 1997. This moving safety zone would include all waters 500 yards fore and aft, and 200 yards on each side of the designated column of parade vessels as it transits the Port of New York and New Jersey. The moving safety zone will expand to include all waters within a 200 yard radius of each vessel upon dispersal of the parade column until each is safely moored.

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

ADDRESSES: Comments should be mailed to Lieutenant John W. Green, Waterways Oversight Branch, Coast Guard Activities New York, Bldg. 108, Governors Island, New York 10004–5006.

FOR FURTHER INFORMATION CONTACT: Lieutenant John W. Green, Chief, Waterways Oversight Branch, Waterways Management Division, Coast Guard Activities New York, (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Intrepid Museum Foundation is sponsoring a parade of U.S. Coast Guard, U.S. Navy, and foreign naval ships through the Port of New York and New Jersey on May 21, 1997. This proposed regulation will establish a moving safety zone to include all waters 500 yards forward of the lead parade vessel, 500 yards aft of the last parade vessel, and 200 yards on each side of the designated column of parade vessels as it transits the Port of New York and New Jersey between the Verrazano Narrows Bridge and the waters of the Hudson River west of Riverbank State Park, between West 137th and West 144th Streets, Manhattan, New York. As the vessels turn in the waters west of Riverbank State Park and proceed southbound in the Hudson River, the moving safety zone will expand to include all waters within a 200 yard

radius of each vessel from its turning point until safely berthed at various locations within the Port of New York and New Jersey. The safety zone will also expand briefly to include the waters of the Hudson River between Piers 84 and 88, Manhattan, New York, from the parade vessel column east to the Manhattan shoreline as the column passes in front of Piers 84 through 88. The purpose of this expansion is to allow the public an unobstructed view of the parade from the pierside reviewing stand. This regulation is effective from 7:30 a.m. to 5:30 p.m. on May 21, 1997. No vessel will be permitted to enter or move within this safety zone unless authorized by the Captain of the Port, New York.

This regulation is needed to protect the maritime public from possible hazards to navigation associated with a parade of naval vessels transiting the waters of New York harbor in close proximity. These vessels have limited maneuverability and require a clear traffic lane to safely navigate.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–97–016) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Good cause exists for providing a comment period of less than 60 days. Due to the date final information concerning the event was received, a comment period of greater than 21 days would not allow sufficient time to publish a final rule prior to the scheduled date of the event. Since this proposal is neither complex nor technical, a 21 day comment period is sufficient to provide reasonable notice of the proposed regulation. This safety zone is identical to last year's which caused little or no disruption to vessel traffic and maritime interests will be provided extensive advance notifications. A longer comment period would be impracticable, unnecessary, and contrary to the public interest.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This moving safety zone prevents vessels from transiting portions of Upper New York Bay and the Hudson River in the Port of New York and New Jersey on Wednesday, May 21, 1997. Although there is a regular flow of traffic through this area, there is not likely to be a significant impact on recreational or commercial vessel traffic for several reasons: due to the moving nature of the safety zone, no single location will be affected for a prolonged period of time; commercial and recreational vessels could transit on either side of the moving safety zone except along the Manhattan side between Piers 84 and 88 as the parade passes in front of these Piers; and alternate routes are available for commercial and recreational vessels that can safely navigate the Harlem and East Rivers, Kill Van Kull, Arthur Kill, and Buttermilk Channel. Similar safety zones have been established for several past Fleet Week parades of ships with minimal or no disruption to vessel traffic or other interests in the port. In addition, extensive, advance notifications will be made to the maritime community so mariners can adjust their plans accordingly.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned or operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

For the reasons discussed in the Regulatory Evaluation section, the Coast Guard has determined that there is not likely to be a significant impact on small entities. In addition, similar safety zones have been established for several past Fleet Week parades of ships with minimal or no disruption to vessel traffic or other interests in the port.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under 2.B.2.e.(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this safety zone is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–016, is added to read as follows:

§ 165.T01–016 Safety Zone: Fleet Week 1997 Parade of Ships, Port of New York and New Jersey.

(a) *Location.*

(1) This moving safety zone includes all waters within 500 yards forward of the lead parade vessel, 500 yards aft of the last parade vessel, and 200 yards on

each side of the designated column of parade vessels as it transits between the Verrazano Narrows Bridge and the waters of the Hudson River west of Riverbank State Park, between West 137th and West 144th Streets, Manhattan, New York.

(2) The moving safety zone includes all waters within a 200 yard radius of each parade vessel from its turning point near Riverbank State Park until the vessel is safely berthed at various locations in the Port of New York and New Jersey.

(3) The safety zone includes all waters of the Hudson River between Piers 84 and 88, Manhattan, New York, from the parade vessel column east to the Manhattan shoreline as the column passes in front of Piers 84 through 88.

(b) This regulation is effective from 7:30 a.m. to 5:30 p.m. on May 21, 1997, unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 28, 1997.

Richard C. Vlaun,

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

[FR Doc. 97–9217 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ17–1–166; FRL–5809–3]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Volatile Organic Compounds for the State of New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes approval of a request from New Jersey to revise its State Implementation Plan to incorporate revisions to Subchapter 16 ''Control and Prohibition of Air Pollution by Volatile Organic Compounds.'' These revisions relate to the control of volatile organic compounds from major stationary sources not subject to control techniques guidelines. The intended effect is to reduce the emissions of volatile organic compounds and thereby reduce ozone concentrations in the lower atmosphere. EPA proposes to find that the State has met the Clean Air Act requirement to adopt reasonably available control technology for non-CTG major sources.

EPA also proposes approval of revisions to Subchapter 8 ''Permits and Certificates,'' Subchapter 17 ''Control and Prohibition of Air Pollution by Toxic Substances,'' Subchapter 23 ''Prevention of Air Pollution From Architectural Coatings and Consumer Products'' and Subchapter 25 ''Control and Prohibition of Air Pollution by Vehicular Fuels,'' and Air Test Method 3—Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations (Title 7, Chapter 27B, Subchapter 3).

Revisions to these regulations only involve administrative changes made to insure consistency with Subchapter 16 revisions. This proposal would revise the State Implementation Plan so that it contains the most current versions of the State regulations.

DATES: Comments must be submitted on or before May 12, 1997.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan or Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (Act) as amended in 1990 sets forth a number of requirements that states with areas designated as nonattainment for ozone must satisfy and sets forth a timetable for satisfying these Act requirements (section 182). These requirements are further explained in the General Preamble to the Act (57 FR 13513), which was published on April 16, 1992.

Under section 182(b)(2) of the Act, nonattainment areas classified as moderate or above are required to adopt reasonably available control technology (RACT) rules for volatile organic compound (VOC) sources. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing control techniques guideline (CTG)—i.e., a CTG issued prior to the enactment of the 1990 Amendments; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG (non-CTG major sources). This requirement also applies to all areas within the Ozone Transport Region. The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979).

New Jersey is part of the Ozone Transport Region (OTR), therefore, the section 182(b)(2) RACT requirements are applicable to sources throughout the State. The schedule for implementing the RACT rules in an OTR require final installation of the actual VOC controls by May 31, 1995 on those sources for which installation by that date is practicable.

New Jersey's VOC regulation, Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds,'' of Chapter 27, Title 7 of the New Jersey Administrative Code, was previously approved by EPA as fulfilling the requirement to address all source categories covered by a pre-enactment CTG document (59 FR 17933, April 15, 1994). Since enactment of the Clean Air Act amendments, EPA has published three CTGs controlling synthetic organic chemical manufacturing industry (SOCMI) distillation operations, SOCMI reactor operations, and wood furniture manufacturing operations. New Jersey's previously approved Subchapter 16 regulates both SOCMI operations under the process source gases provisions, and wood furniture under the surface coating provisions. A fourth CTG was

published on August 27, 1996 for shipbuilding and repair, however regulations for this CTG are not due until August 27, 1997.

This proposed action addresses the requirement to regulate non-CTG major sources of VOC. The major source definition depends on the classification of the nonattainment area and whether the area is in the OTR (''major'' as defined in section 302, section 182(c), (d), and (e), and section 184(b)). For areas in an OTR other than those areas designated severe nonattainment, the definition of major VOC source is any source that emits or has the potential to emit at least 50 tons per year. In a severe nonattainment area, the definition of a major VOC source is any source that emits or has the potential to emit at least 25 tons per year.

II. State Submittals

On November 15, 1993, the Commissioner of the New Jersey Department of Environmental Protection and Energy submitted a State Implementation Plan revision, part of which contained adopted revisions to Subchapter 16, ''Control and Prohibition of Air Pollution by Volatile Organic Compounds,'' of Chapter 27, Title 7 of the New Jersey Administrative Code, effective December 20, 1993. This was intended to fulfill the non-CTG major source requirement of the Act. EPA determined that the November 15, 1993 submittal was complete on December 29, 1993. As of November 15, 1993 New Jersey only adopted a portion of the proposal which involved Section 16.1 definitions and Section 16.17 which requires major sources of VOCs not elsewhere regulated in Subchapter 16 to implement RACT (Generic RACT).

On June 21, 1996, the Commissioner of the New Jersey Department of Environmental Protection (NJDEP) submitted a State Implementation Plan revision which contained two revisions to Subchapter 16 and two ''Administrative Changes and Corrections'' to Subchapter 16. EPA is proposing action on all changes which have occurred in Subchapter 16 (effective March 2, 1992) since EPA's last approval on April 15, 1994 (59 FR 1994). This includes the following versions of Subchapter 16 with effective dates of December 20, 1993, June 20, 1994, December 5, 1994, May 15, 1995, and July 17, 1995. It should be noted that several new sections have been added to Subchapter 16 and this has necessitated recodifying several sections. The new section numbering will be used.

It should also be noted that final approval of this State Implementation Plan revision will remove the requirement to adopt a federal implementation plan. The need for a federal implementation plan resulted from EPA's finding on January 15, 1993 that New Jersey had failed to submit a complete State Implementation Plan revision as required by the Act on November 15, 1992.

III. Findings

A. Generic RACT Provisions

Section 16.1 Definitions

New Jersey revised section 16.1 to include appropriate definitions for terms used in the new provisions. These are generally consistent with EPA guidance. The following new terms are important in understanding the generic RACT provisions which have been added to Subchapter 16: federally enforceable, potential to emit, State Implementation Plan and major VOC facility.

1. Federally enforceable—Section 16.1's definition for federally enforceable provides a definition of what limitations and conditions can be considered enforceable by the EPA. It contains a list of limitations and conditions, such as EPA's new source performance standards (40 CFR Part 60), national emission standards for hazardous air pollutants (40 CFR Part 61), and provisions of the applicable State Implementation Plan. In addition, the State includes ''any permit or order issued pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C–1 *et seq.*, of this chapter.'' This part of the definition is acceptable only in so far as it refers to permits that are issued pursuant to programs approved as part of the State Implementation Plan, i.e. Subchapter 8 which is the only State mechanism for issuing permits to air pollution sources. EPA is proposing approval of this definition.

2. Potential to emit—Section 16.1's definition for potential to emit provides direction on how to determine a source's or facility's potential to emit which is used to determine whether a source is subject to given requirements. It is based on the maximum capacity of a source or facility operating 8760 hours a year unless there are any federally enforceable limitations in place limiting the hours of operation. This definition is consistent with EPA's guidance and policy. EPA is proposing approval of this definition.

3. State Implementation Plan—Section 16.1's definition for State Implementation Plan refers to plans which have been prepared by the State and approved by EPA pursuant to section 110 of the Act. This definition is consistent with EPA's guidance and policy. EPA is proposing approval of this definition.

4. Major VOC facility—Section 16.1 defines a major VOC facility as any facility with the potential to emit 25 or more tons of VOC per year. EPA is proposing approval of this definition.

Section 16.17 Facility-Specific VOC Control Requirements

Section 16.17 provides a procedure for establishing VOC control requirements that represent RACT for a particular process, item of equipment or source operation that is not specifically regulated by name elsewhere in Subchapter 16 and is located at a major VOC facility. This would cover those non-CTG major sources required to be controlled pursuant to section 182(b)(2). This procedure provides four control options for meeting RACT:

1. Facility is currently operating controls which collect at least 90 percent of the VOC emissions and prevent from being released at least 90 percent of the VOCs that were collected; pollution prevention measures can contribute emission reductions towards meeting these emission limitations, so long as an equivalent level of emission reductions is achieved.

2. Facility will be served by controls which collect at least 90 percent of the VOC emissions and prevent from being released at least 90 percent of the VOCs that were collected; pollution prevention measures can contribute emission reductions towards meeting these emission limitations, so long as an equivalent level of emission reductions is achieved.

3. Facility has or will have federally enforceable limits on its potential to emit restricting it to below 25 tons per year.

4. Facility will develop and have approved an alternative VOC control plan which represents RACT for that facility.

Sources subject to other provisions in Subchapter 16 may also apply for an alternative VOC control plan. However, application for an alternative VOC control plan does not relieve the source from complying with applicable compliance dates.

In the first two situations listed above, RACT is defined as at least 90 percent capture of VOC emissions and at least 90 percent control of the captured VOC emissions. The source must demonstrate that these limits have been met and provide for adequate recordkeeping which can demonstrate that the compliance plan has been met. The source must also have the appropriate permits and certificates. The source

must be in compliance with these provisions by May 31, 1995. Should a source use pollution prevention methods to meet this requirement, the provision requires ''at least the same level of VOC emission reductions.'' Since the provision is clear that the 90 percent capture and 90 percent control is the criteria, any compliance plan which does not meet this criteria will not be consistent with Subchapter 16. EPA is proposing approval of these provisions.

In the third situation, a facility whose actual emissions of VOCs in 1990 and each year thereafter has been less than 25 tons per year including fugitive emissions, may comply by limiting their potential emissions to less than 25 tons per year. The source must submit and have approved a compliance plan which demonstrates that these limits have been met. The source must also have the appropriate permits and certificates which limit the potential to emit, and provide for adequate recordkeeping. Without an approved compliance plan the source would be out of compliance with this section.

The State provided the public with an opportunity to comment on the acceptability of this method of compliance. The sources must meet the criteria in section 16.17, which includes recordkeeping sufficient to determine whether the source is complying, and this would be considered an acceptable method of complying. New Jersey requires any limits on potential emissions to be federally enforceable, and contained in a sources'' operating permit. EPA is proposing approval of this provision.

In the fourth situation, an alternative VOC control plan must be approved by NJDEP. It must include a technical analysis of all the possible control technologies and process alterations. For those alternatives that are technologically feasible, the plan must evaluate their economic feasibility. The plan must be supported with adequate documentation and identify the proposed RACT level. The source must also have the appropriate permits and certificates and provide for adequate recordkeeping. The source must be in compliance with these provisions by May 31, 1995. In this situation, the NJDEP will publish a Notice of Opportunity for Public Comment and shall submit the alternative VOC control plan to EPA as a proposed State Implementation Plan revision. EPA is proposing approval of this provision.

Section 16.17(o) identifies the reasons why the State ''may'' revoke an approval of an alterative VOC control plan. One reason would be an EPA disapproval of the plan after EPA rulemaking action. The State Implementation Plan approval process is not complete until EPA grants approval of a revision, therefore, use of the word ''may'' provides notice of future State revocation should EPA disapprove of a submittal. Given EPA's authority under the Act to require the State to correct any EPA identified deficiencies and the State's recognition that State approval does not guarantee a State Implementation Plan approval, EPA is proposing an approval of this provision.

For sources who want to comply with the alternative VOC control plan provisions, Section 16.17 provides a procedure and schedule which must be followed in order to be in compliance with Subchapter 16. Should a source not comply with this procedure, it would constitute a violation of Subchapter 16 and would subject the source owner or operator to State and federal enforcement action and associated civil and applicable criminal penalties. EPA has determined this is sufficient to insure that sources comply. EPA is proposing approval of this provision.

Subsequent to New Jersey's submission of these State Implementation Plan revisions, national policy discussions ensued regarding the approvability of state regulations that contain generic provisions (or in New Jersey's case, alternative VOC control plan provisions), in establishing RACT requirements for major sources of VOC emissions. These discussions resulted in additional Agency guidance.

Generic provisions are those portions of a regulation which require the application of RACT to an emission point, for which the degree of control is not specified in the rule but rather is to be determined on a case-by-case basis taking technological and economic factors into consideration. Under the Act, these individually determined RACT limits would then need to be submitted by a state as a State Implementation Plan revision for EPA approval. On November 7, 1996, EPA issued a policy memorandum providing additional guidance for approving regulations which contain these ''generic provisions.'' (Sally Shaver memorandum to EPA Division Directors, ''Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements'').

EPA policy allows for the full approval of state generic RACT rules prior to EPA approval of all of the case-by-case major source RACT determinations, provided an analysis is completed that concludes that the remaining source RACT determinations involve a de minimis level of VOC emissions and such pending determinations must be submitted as State Implementation Plan revisions. Such an approval does not exempt the remaining sources from RACT; rather it is a de minimis deferral of the approval of these case-by-case RACT limits.

EPA has evaluated information provided by New Jersey concerning the possible use by major sources of the generic RACT provisions in order to meet the RACT requirement. New Jersey has identified five sources that are using the generic RACT provisions. One has been submitted as a State Implementation Plan revision and four are currently being processed by the State and will be submitted as State Implementation Plan revisions. Based on the emission reductions claimed in New Jersey's 15 Percent Plan for Subchapter 16, these sources represent three percent of the VOC emission reductions resulting from sources coming into compliance with Subchapter 16. EPA has determined that the remaining emission reductions are de minimis. Therefore, EPA proposes to find that New Jersey's VOC RACT regulation conforms with EPA's policy regarding the approval of generic RACT provisions or rules.

As stated above, full approval of Subchapter 16 will not relieve sources of the obligation to develop, submit and implement RACT level controls. Nor will it relieve New Jersey of the obligation to ensure that all sources within the State comply with the VOC RACT requirements of the Act by adopting and implementing emission limitations. The proposed approval of Subchapter 16 requires that all major sources of VOC must comply with RACT and this requirement would be enforceable by EPA as well as citizens under Section 304 of the Act. If EPA determines that the regulated sources and the State are not complying with the requirement to adopt RACT, EPA could issue a State Implementation Plan call or a finding of non-implementation of the State Implementation Plan. EPA is proposing approval of these generic RACT provisions.

B. Source Specific Provisions

1. Combustion sources. Subchapter 16 now regulates the following types of combustion sources: boilers, stationary gas turbines, stationary internal combustion engines and asphalt plants. These sources are also regulated under the nitrogen oxides (NO_X) RACT rules under title 7, chapter 27, Subchapter 19, ''Control and Prohibition of Air Pollution from Oxides of Nitrogen.''

Emissions of VOCs and NO_X from these sources are related. As NO_X emissions decrease, VOC emissions tend to increase. The new VOC provisions are intended to minimize the VOC emissions while insuring that NO_X emissions are reduced as required by Subchapter 19.

a. Utility Boilers

Section 7:27–16.8 specifies emission limitations for utility boilers and requires the owners and operators of these sources to install a continuous emission monitoring system for carbon monoxide. The emission limits specified by New Jersey are the lowest that the boilers can reasonably achieve while still complying with the emission limits in the NO_X RACT rules. In addition, the sources are required to annually adjust the combustion process to minimize VOC emissions. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements. EPA is proposing approval of this provision.

b. Non-Utility Boilers

Section 7:27–16.8 also specifies requirements for non-utility boilers. The control strategy depends on the maximum gross heat input rate of non-utility boiler. Smaller boilers are required to annually adjust the combustion process to minimize VOC emissions, while the larger size boilers must meet emission limits. Also, any non-utility boiler with a maximum gross heat input rate of at least 250 million BTU per hour shall install a continuous emissions monitoring system for carbon monoxide. The emission limits specified by the State are the lowest level that the boilers can reasonably achieve while still complying with the emission limits in the NO_X RACT rules. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements. EPA is proposing approval of this provision.

c. Stationary Gas Turbines

Section 7:27–16.9 specifies emission limitations for stationary gas turbines. The emission limits specified by New Jersey are the lowest that the turbines can reasonably achieve while still complying with the emission limits in the NO_X RACT rules. In addition, the sources are required to annually adjust the combustion process to minimize VOC emissions. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements. EPA is proposing to approve this provision.

d. Stationary Internal Combustion Engines

Section 7:27–16.10 specifies emission limitations for stationary internal combustion engines. The emission limits specified by New Jersey are the lowest that the engines can reasonably achieve while still complying with the emission limits in the NO_X RACT rules. In addition, the sources are required to annually adjust the combustion process to minimize VOC emissions. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements. EPA is proposing to approve this provision.

e. Asphalt Plants

Section 7:27–16.11 specifies emission limitations for batch mixed and drum asphalt plants. The emission limits specified by New Jersey are the lowest that the asphalt plants can reasonably achieve while still complying with the emission limits in the NO_X RACT rules. In addition, the sources are required to annually adjust the combustion process to minimize VOC emissions. The emission limits are enforceable through appropriate averaging times, test methods, compliance schedules and reporting and recordkeeping requirements. EPA is proposing approval of this provision.

f. Flares

Section 7:27–16.13 requires that any flare in use after May 31, 1995 at a major VOC facility must have been designed to reduce VOC emissions by at least 95 percent. The rule prohibits the use of noncomplying flares after that date. The flare must also be installed and operated in accordance with the manufacturers' specifications. Based upon present technology available, flares have been attaining control efficiency levels at 95 percent and greater. Regulatory compliance is maintained via inspections, certification, recordkeeping and recording requirements, and operation and maintenance procedures to ensure that the control technology is installed and operating sufficiently. EPA is proposing approval of this provision.

2. VOC Transfer Operations

Section 16.4 specifies emission limitations and operating practices for operations that involve the transfer of VOCs other than gasoline. This section applies to receiving vessels or tanks, delivery vessels, transfer operations and contains requirements similar to those required in Section 16.3 for gasoline transfer and storage. Receiving vessels (including storage tanks, delivery vessels, manufacturing process vessels) of 2,000 gallons or greater are required to have submerged filling. Storage tanks of 2,000 gallons or greater capacity with emissions of 1,000 pounds VOC per year must have a vapor control device. Delivery vessels must be inspected and certified as passing pressure tests and must be loaded and unloaded within specified pressure and vacuum standards. Transfer operations with emissions of 2,000 pounds VOC per year are required to have a vapor balance system or vapor control device that is 90 percent effective.

Section 16.5 specifies emission limitations and operating practices for marine vessel loading of VOCs and ballasting operations. Emissions from the transfer of VOCs must be reduced by 95 percent and transfers must meet leak tightness standards. EPA is proposing approval of this provision.

3. Surface Coating Operations.

Sections 16.7 has been revised to add three new surface coating categories: concrete pipe coating, sheet-fed gravure printing and screen printing operations to the original categories previously approved by EPA. These new categories are subject to the same general requirements for recordkeeping, reporting, options for coming into compliance and testing. Concrete pipe coating operations are subject to the same emission limitations as metal pipe coating operations. Inks used in screen printing operations are limited to 3.3 pounds of VOC per gallon, with the exception that inks used on fabrics are limited to 2.9 pounds of VOC per gallon. There are also two specialty ink limitations: conductive inks are limited to 8.5 pounds of VOC per gallon and special purpose screen printing inks which must withstand adverse environmental conditions are limited to 6.7 pounds of VOC per gallon. As an alternative to complying with the coating limitations, a source could choose to comply by using add-on control equipment which captures at least 70 percent of the VOC emissions and controls 90 percent of these captured emissions using carbon adsorption equipment or 95 percent if using a thermal oxidizer.

New Jersey has also revised the control requirements for the other regulated printing operations which choose to comply by using add-on controls to reflect advances in equipment capabilities. Sources installing new thermal oxidizers will

have to meet the 95 percent destruction requirement. Carbon adsorption equipment will continue to meet the 90 percent control requirement.

New limitations have been added for fountain solutions used to dampen printing plates in order to prevent ink transfer to areas which will not contain a printed image. The VOC content of fountain solutions is limited to 5 percent if the solution is kept at a temperature of 55 degrees Fahrenheit or less and 3 percent if the solution is at a temperature greater than 55 degrees Fahrenheit. EPA is proposing approval of these provisions.

4. Leak Detection and Repair at Chemical Plants.

The leak detection and repair requirements previously contained in section 16.6 have been moved to a new section 16.18. Section 16.18 specifies the leak detection and repair requirements for various types of facilities, including those for which a CTG was published. These were previously approved by EPA. Section 16.18 now requires chemical plants which are major, that is, which process 550 tons/year of VOC, to conduct leak detection and repair identified leaking components. These requirements were based on the previously issued CTGs and leak detection and repair requirements contained in ''National Emission Standards for Organic Hazardous Air Pollutants.'' EPA is proposing approval of this provision.

5. Natural Gas Pipelines—Blowdown.

Section 16.21 requires natural gas pipeline owners or operators to control the emissions of VOC during non-emergency release of natural gas from the pipeline when performing inspections, maintenance or repairs. This is referred to as blowdown and covers releases of VOC of 2,000 pounds or greater. Blowdown events which would have an emission rate above 3.5 pounds of VOC per hour would be regulated by section 16.16 which would require 95 percent control. Since the smaller blowdown events are infrequent and can occur at pump stations, compressor stations and at valves along the pipeline (instead of at a fixed location), it is difficult to require a specific level of control or operating procedures. Instead these events are required to be included in ''Control Measure Plans,'' which requires reporting of such events and the reduction of VOCs through use of control technology or operating procedures which limit VOC emissions.

Unlike RACT demonstrations required by section 16.17, minor blowdown sources are not automatically required to submit Control Measure Plans unless requested to do so. However, annual reporting of blowdown events is required and New Jersey may require amendments if the State or EPA identifies deficiencies and denies approval of a proposed Control Measure Plan.

While EPA does not require RACT for this minor source category, New Jersey has taken credit for emission reductions resulting from controlling this source category in its 15 Percent Rate of Progress Plan. Therefore, EPA recognizes the need for review and revision of such plans in the event that the Control Measure Plans do not meet the requirements of section 16.21(f). While the submission of such plans is not automatic, EPA has determined that because the reductions from such sources are minimal (potentially no more than one percent of the VOC reductions resulting from the revisions to Subchapter 16) and because New Jersey has identified a surplus of reductions which is greater than the reductions it credits for this source category, EPA proposes approval of Section 16.21. Regulatory compliance is maintained via implementation of the Control Measure Plans and annual reports required by this provision.

C. Other Changes

In addition to expanding Subchapter 16 with the new sections discussed above, New Jersey has made a number of less extensive changes to Subchapter 16. Minor changes have been made to the previously approved sections and some have also been renumbered. The definition of VOC has been changed to make it consistent with EPA's. New Jersey has made administrative changes to Subchapter 16 in order to correct errors it had identified. These were generally of a typographical nature involving references, punctuation and omissions and did not substantively change the requirements previously adopted. Along with the recodification, several sections were also reorganized to improve their clarity. These are consistent with the original adoptions. The State also removed interim milestones which have past, while retaining the final compliance date. EPA is proposing approval of these changes.

D. Related Changes to Other Subchapters

Subchapters 8, 17, 23, 25, and Air Test Method 3. New Jersey also submitted as part of this State Implementation Plan revision, revisions to Subchapter 8 ''Permits and Certificates,'' which provides the mechanism which New Jersey uses for issuing permits and certificates; Subchapter 17 ''Control and Prohibition of Air Pollution by Toxic Substances,'' which restricts the emission of toxic substances; Subchapter 23 ''Prevention of Air Pollution From Architectural Coatings and Consumer Products'' which limits the amount of VOC in architectural coatings and paints; Subchapter 25 ''Control and Prohibition of Air Pollution by Vehicular Fuels'' which regulates gasoline; and Air Test Method 3—Sampling and Analytical Procedures for the Determination of Volatile Organic Compounds from Source Operations (Title 7, Chapter 27B, Subchapter 3). The revisions made to these Subchapters primarily involve changing the definition of VOC to make it consistent with EPA's and minor administrative changes similar to those described in III.C. above. EPA is proposing approval of the revisions to Subchapters 8, 23, 25, and Air Test Method 3.

IV. Summary

EPA has evaluated the submitted revisions for consistency with its provisions, EPA regulations and EPA policy. EPA is proposing approval of Subchapter 16. EPA is also proposing to approve the revisions of Subchapters 8, 17, 23, 25, and Air Test Method 3.

Neither the ozone attainment demonstration nor other aspects of the ozone State Implementation Plan are being revised by this action. EPA, therefore, is only addressing the adequacy of Subchapter 16 in meeting section 182(b)(2) with regard to non-CTG major sources and the ability of this revision to fulfill EPA requirements. EPA is not making a finding concerning other aspects of its State Implementation Plan at this time. EPA is only proposing approval of the addition of the new control requirements.

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

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal**

Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Implementation Plan approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal State Implementation Plan approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning State Implementation Plans on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

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

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

The Administrator's decision to approve or disapprove the State Implementation Plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 2, 1997.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 97–9382 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5810–9]

Regulations of Fuels and Fuel Additives: Reformulated Gasoline Covered Areas Provision Modification

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: This document announces the time and place for a public hearing regarding EPA's proposed rule to modify the covered areas provision of the reformulated gasoline (RFG) rule. The agency published this proposed rule in the **Federal Register** on March 28, 1997 (See 62 FR 15077 for further information on the proposal).

DATES: EPA will conduct a public hearing on the proposed rule on April 18, 1997, in Washington, DC beginning at 9:00 a.m. The hearing will continue until all interested parties have had an opportunity to testify. If you wish to testify at this public hearing, contact Karen Smith at (202) 233–9674 by April 16, 1997. If no party has contacted EPA by that date and stated their interest in testifying on the proposal, the hearing will be subject to cancellation without further notification. If you want to know if the hearing has been canceled contact the person named above.

ADDRESSES: The public hearing will be held from 9:00 a.m. until its completion at the Holiday Inn Capitol Hill, South Ballroom, 415 New Jersey Avenue, Washington, DC. Material relevant to this document have been placed in Docket A–96–30. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, in room M–1500 Waterside Mall. Documents may be inspected from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Written comments should be submitted (in duplicate) to Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A copy should also be sent to Karen Smith at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Karen Smith at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9674.

Procedures for Public Participation

A. Comments and the Public Docket

The scope of EPA's modification of section 80.70(k) of the reformulated gasoline rule is to allow states to opt into the federal RFG program for any area classified as marginal, moderate, serious or severe ozone nonattainment area as of November 15, 1990, the date of the enactment of the Clean Air Act Amendments of 1990, or any time later. EPA is seeking comments on whether a minimum lead time of up to one year should be used in setting the effective date and whether this should apply to former nonattainment areas that opt-in and/or areas that are classified as nonattainment when they opt-in.

Persons with comments containing propriety information must distinguish such information from other comments to the greatest extent and label it as ''Confidential Business Information.'' If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in

40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

B. Public Participation

Any person desiring to present testimony regarding this proposed rule at the public hearing (see **DATES**) should notify the contact person listed above of such intent as soon as possible. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling testimony for those who have not notified the contact person. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed previously.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–96–30 (see **ADDRESSES**).

Mr. Charles Freed, Division Director of the Fuels and Energy Division, Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. Because a public hearing is designed to give interested parties an opportunity to participate in the proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding. The Presiding Officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness. EPA asks that persons who testify attempt to limit their testimony to ten minutes, if possible. The Administrator will base her decision with regard to the modification of the covered areas of the reformulated gasoline rule on the record of the public hearing and on any other relevant written submissions and other pertinent information. This information will be available for public inspection at the EPA Air Docket, Docket No. A–96–30 (see **ADDRESSES**).

Dated: April 8, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–9518 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–110, RM–9045]

Radio Broadcasting Services; Mansura, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Mark A. Zweig proposing the allotment of Channel 240A to Mansura, Louisiana, as the community's first local aural transmission service. Channel 240A can be allotted to Mansura in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 240A at Mansura are 31–03–36 NL and 92–03–00 WL.

DATES: Comments must be filed on or before May 27, 1997, and reply comments on or before June 11, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark Zweig, P.O. Box 350, Bunkie, Louisiana 71322 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–110, adopted March 26, 1997, and released April 4, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–9440 Filed 4–10–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–108, RM–9024]

Radio Broadcasting Services; Riley, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Donald Law proposing the allotment of Channel 242C3 to Riley, Kansas, as the community's first local aural transmission service. Channel 242C3 can be allotted to Riley in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 kilometers (7.9 miles) east in order to avoid a short-spacing conflict with the proposal (RM–8874) to allot Channel 242C3 at Cawker City, Kansas. The coordinates for Channel 242C3 at Riley are 39–16–40 NL and 96–40–50 WL.

DATES: Comments must be filed on or before May 27, 1997, and reply comments on or before June 11, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan J. Alpert, Esq., 2120 N. 21st Road, Suite 400, Arlington, Virginia 22201 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–108, adopted March 26, 1997, and released April 4, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–9438 Filed 4–10–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–109, RM–9018]

Radio Broadcasting Services; Eckley, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by KRDZ Broadcasters, Inc., requesting the allotment of Channel 237C1 to Eckley, Colorado, an incorporated community, as its first local aural transmission service. Coordinates used for Channel 237C1 at Eckley are those of the city reference at 40–06–48 NL and 102–29–18 WL.

DATES: Comments must be filed on or before May 27, 1997, and reply comments on or before June 11, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: KRDZ Broadcasters, Inc., Attn: Robert D. Zellmer, Jr., President, P.O. Box 2475, Greeley, CO 80632.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–109, adopted March 26, 1997, and released April 4, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–9441 Filed 4–10–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–111, RM–9052]

Radio Broadcasting Services; Deerfield, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Deerfield FM Radio proposing the allotment of Channel 264C3 to Deerfield, Missouri, as that community's first local broadcast service. The coordinates for Channel 264C3 are 37–43–01 and 94–36–22. There is a site restriction 16.2 kilometers (10.1 miles) southwest of the community.

DATES: Comments must be filed on or before May 27, 1997, and reply comments on or before June 11, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James P. Riley, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–111, adopted March 26, 1997, and released April 4, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–9436 Filed 4–10–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–103, RM–8794; RM–8839]

Radio Broadcasting Services; Smith and Reno, NV, Susanville and Truckee, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order to Show Cause.

SUMMARY: The Commission, in response to a counterproposal filed by Chris Kidd d/b/a Kidd Communications, proposes the allotment of Channel 268A to Truckee, CA, as the community's first local aural transmission service. To accommodate the allotment at Truckee, the Commission also proposes that Channel 271C3 be substituted for Channel 269C3 at Reno, NV, the license of Station KRNV-FM be modified to specify the alternate Class C3 channel, and that Channel 222C2 be substituted for Channel 271C2 at Susanville, CA, and the license of Station KHJQ be modified to specify the alternate Class C2 channel. An Order to Show Cause is directed to Sunbelt Broadcasting Company, licensee of Station KRNV-FM, and to Olympic Broadcasters, Inc., licensee of Station KHJQ, as to why their licenses should not be modified to specify the alternate Class C3 and Class C2 channels, respectively. In addition, to resolve the conflict between the proposed allotment of Channel 271C3 at Smith, NV, and Channel 268A at Truckee, CA, alternate Channel 222C3 can be allotted to Smith, NV. Channel 268A can be allotted to Truckee, CA, with a site restriction of 9.3 kilometers (5.8 miles) west, to avoid a short-spacing to KRNG, Channel 267C2, Fallon, NV, at coordinates 39–17–45; 120–16–57. Channel 271C3 can be allotted to Reno at Station KRNV-FM's presently licensed transmitter site, at coordinates 39–35–03; 119–47–52. Channel 222C2 can be allotted to Susanville at the transmitter site specified in Station KHJQ's outstanding construction permit (BPH–961017IB), at coordinates 40–27–13; 120–34–14. Channel 222C3 can be allotted to Smith, with a site restriction of 0.7 kilometers (0.4 miles) south, at coordinates 38–47–39; 119–19–31, to avoid a short-spacing to Station KZSR, Channel 225C, Reno, NV.

DATES: Comments must be filed on or before May 27, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 96–103, adopted March 26, 1997, and released April 4, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–9437 Filed 4–10–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 970326068–7068–01; I.D. 031197A]

RIN 0648–AJ86

Marine Mammals; Subsistence Taking of Northern Fur Seals; Harvest Estimates

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

ACTION: Proposed rule.

SUMMARY: Pursuant to the regulations governing the subsistence taking of northern fur seals, this action proposes annual estimates of fur seal subsistence need for 1997 through 1999 on the Pribilof Islands, Alaska (AK) and summarizes the annual fur seal subsistence harvests on St. George and St. Paul Islands (the Pribilof Islands) for 1994 through 1996.

DATES: Written comments must be received by May 12, 1997.

ADDRESSES: Comments should be addressed to Hilda Diaz-Soltero, Acting Director, Office of Protected Resources, (F/PR), 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, (907) 586–7235, or Margot Bohan, (301) 713–2322.

SUPPLEMENTARY INFORMATION: The subsistence harvest of northern fur seals, *Callorhinus ursinus*, on the Pribilof Islands, AK, is governed by regulations found in 50 CFR part 216, subpart F, Taking for Subsistence Purposes. The purpose of these regulations, published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents, while restricting taking by sex, age, and season for herd management purposes. To further minimize negative effects on the Pribilof Islands'' fur seal population, the harvest has been limited to a 47-day season (June 23–August 8).

Pursuant to the regulations governing the taking of fur seals for subsistence purposes, NMFS publishes this summary of the fur seal harvest for the previous 3-year period and a projection of the number of seals expected to be taken in the subsequent 3-year period to

meet the subsistence needs of the Aleut residents of the Pribilof Islands, AK.

Subsistence Trends and Estimates

Table 1 shows the number of fur seals taken on the Pribilof Islands for subsistence purposes between 1985 and 1996. The annual harvests were conducted in the established manner and employed the standard methods required under regulations at 50 CFR 216.72. NMFS personnel monitored each daily harvest and worked closely with the tribal governments of each island to further improve the efficiency of the annual harvest and full utilization of the animals taken. NMFS personnel also monitored the disposal of by-products of the subsistence harvest in an effort to ensure that certain parts, such as bacula, of harvested seals were not taken illegally and that waste of edible portions was not occurring.

The number of northern fur seals harvested on St. Paul Island since 1986 has ranged from 1,077 (1990) to 1,710 (1987) (Table 1). The annual subsistence takes on St. George Island since 1986 have ranged from 92 (1987) to 319 (1993) seals (Table 1). Within the past 6 years, the number of fur seals harvested annually has been relatively consistent. Since 1991, the average number of seals harvested each year on St. Paul and St. George Islands has been 1,563 (range: 1,482 to 1,645) and 241 (range: 161 to 319), respectively (Table 1). The actual number of animals harvested has never reached the upper end of the estimated range and has exceeded the lower range in only two (1991 and 1993) of the 6 years, 1991–1996.

TABLE 4.—Subsistence Harvest Levels for Northern Fur Seals on the Pribilof Islands, 1985–1996

Year	Subsistence estimates		Actual harvest levels	
	St. Paul	St. George	St. Paul	St. George
1985	.....	.....	3,384	329
1986	2,400–8,000	800–1,800	1,299	124
1987	1,600–2,400	533–1,800	1,710	92
1988	1,800–2,200	600–740	1,145	113
1989	1,600–1,800	533–600	1,340	181
1990	1,145–1,800	181–500	1,077	164
1991	1,145–1,800	181–500	1,645	281
1992	1,645–2,000	281–500	1,482	194
1993	1,645–2,000	281–500	1,518	319
1994	1,645–2,000	281–500	1,616	161
1995	1,645–2,000	281–500	1,525	260
1996	1,645–2,000	281–500	1,591	232

Summary of Harvest Operations and Monitoring 1994–1996

Beginning with the 1995 harvest, the tribal government of St. Paul voluntarily eliminated the ''butterfly cut'' as a standard method of field dressing harvested seals and resolved to take only whole animals off the field as a step toward maximum utilization of harvested seals for subsistence purposes. The only exceptions to the removal of whole carcasses from the field, as permitted by the tribal government, are: (a) Those animals taken to accommodate some of the elder residents who are physically unable to butcher whole animals supplied to them by the tribal government, and; (b) those carcasses in which the gall bladder was inadvertently ruptured, thus contaminating some of the meat with bile. During 1995 and 1996, only 44 butterfly cuts (1.3 percent of the combined Pribilof total take for these years), were taken from the field under these exceptions.

As a result of the elimination of the butterfly cut as a standard field dressing method and since the removal of whole carcasses constitutes full utilization of the edible portions of harvested seals, NMFS determined that it was no longer necessary to continue the percent-use calculations previously applied to the harvest. The butterfly cut was never a standard field dressing method on St. George Island; therefore, removal of only whole carcasses from the harvesting field is now a uniform practice in the Pribilofs.

Regarding the utilization of the inedible portions of harvested seals, the tribal governments of both islands have implemented a program that supports full utilization of inedible seal parts for traditional arts, crafts, and other uses permitted under regulations at 50 CFR 216.73. The result has been an expanded use of these materials by the Aleut residents and increased fulfillment of the non-wasteful harvest requirements.

During the 1995 and 1996 harvests, NMFS and the tribal governments of both islands agreed to conduct an investigation into the entanglement of fur seals in marine debris, such as discarded fishing netting, rope, and packaging bands. Part of this effort involved removing the entangling debris from seals encountered during harvest operations. A total of 88 seals (both islands) were temporarily restrained on the harvesting fields and, upon successful removal of the entangling debris, were released back into their natural environment by the sealing crews.

Estimate of Subsistence Need for the Period 1997–1999

The projected subsistence harvest estimates are given as a range, the lower end of which may be exceeded if NMFS is given notice, and the Assistant Administrator for Fisheries, NOAA, determines that the annual subsistence needs of the Pribilof Aleuts have not been satisfied (50 CFR 216.72(e)(1)(i)). Conversely, the harvest can be terminated before the lower end of the range is reached if it is determined that the annual subsistence needs of the Pribilof residents have been met or the harvest has been conducted in a wasteful manner.

In September 1996, NMFS requested that the tribal government of each island determine the number of fur seals that would be needed by their communities each year for the 3-year period 1997 through 1999. The response from the St. Paul Island tribal government was to maintain the current range of 1,645–2,000 seals. The St. George Island tribal government requested that the lower end range be increased from 281 to 300 seals and that the upper bound remain at 500 seals.

In its response to the NMFS request for subsistence need estimates, the St. George tribal government also formally requested to be allowed to take fur seal

pups for their traditional potlatch rites. Representatives of the St. Paul Island tribal government have made similar requests. Current regulations at 50 CFR 216.72(c)(3) prohibit the taking of fur seal pups.

The tribal government of St. George Island also requested an increase in the number of allowable haulout areas from which to conduct the annual harvest. At present, regulations at 50 CFR 216.72(d)(2) limit harvestable locations to two haulouts, which can be harvested no more than twice per week. These requests for pups and additional haulouts for harvesting will not be addressed in time for this harvest; they will be considered through a separate co-management process in the future.

Regarding the proposed increase of the lower end estimate range for St. George Island from 281 to 300 seals, the continuing decline of the island's economy has resulted in an increased rate of unemployment and, thus, a greater reliance on subsistence harvesting of food resources by the Aleut residents of St. George Island to meet their needs for the 1997–1999 period. In response to the information provided by the tribal governments of St. Paul and St. George Islands, NMFS proposes that the estimated range on St. Paul Island for each of the years, 1997–1999, remains the same as was established for the years 1994–1996 (1,645 to 2,000), and that the annual range on St. George Island for the years, 1997–1999, be established at 300–500 seals.

As described earlier in this document, if the Aleut residents of either island reach the lower end of this yearly harvest estimate and have unmet subsistence needs and no indication of waste, they may request an additional number of seals up to the upper limit of the respective harvest estimates. The residents of St. George and St. Paul Islands may substantiate any additional need for seals by submitting in writing the information upon which they base their decision that subsistence needs are unfulfilled. The regulations at 50 CFR 216.72(e)(1)(I) require a suspension of the fur seal harvest for up to 48 hours once the lower end of the estimated harvest levels is reached. The suspension is to last no more than 48 hours, followed either by a finding that the subsistence needs have been met or by a revised estimate of the number of seals necessary to satisfy the Aleuts' subsistence needs.

NMFS emphasizes that it expects the harvest of fur seals to be non-wasteful and in full compliance with the regulations specified at 50 CFR 216.72. The agency will continue to monitor the entire harvest on St. Paul Island and a portion of the harvest on St. George Island during 1997–1999 to ensure this result.

Dated: April 2, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–9389 Filed 4–10–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 031797A]

RIN 0648–AJ27

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene 12 public hearings on Draft Amendment 15 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP) and a related draft environmental assessment (EA).

DATES: Written comments will be accepted until May 2, 1997. The hearings will be held from April 14 to April 24, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to and copies of the draft amendment are available from Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

The hearings will be held in FL, AL, MS, LA, and TX. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and public accommodations.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on Draft Amendment 15 to the FMP and its draft EA. The purposes of Amendment 15 include: (1) Establishing a license limitation system for the commercial red snapper fishery; (2) limiting possession of reef fish in excess of the recreational bag limit to fish taken in reef fish traps and stone crab and spiny lobster traps; (3) increasing the commercial fishery size limit for vermilion snapper; (4) removing from management under the FMP all grunts, porgies, and sea bass; (5) prohibiting commercial landings of greater amberjack during the spawning season (i.e., March, April, and May); and (6) specifying that the 20-fish aggregate bag limit includes only those species within the reef fish management unit.

Regarding the license limitation system for the commercial red snapper fishery, the Council is considering 10 alternatives related to establishing initial eligibility to participate in the fishery and initial trip limits. The initially preferred alternative would limit participation to vessels with records of landing in 2 out of 3 years during the period 1990–1992 of at least 2,500 lb (1,134 kg). Under this alternative, eligible participants would be granted one of three classes of licenses based on their level of landings during the 1990–1992 period. The three license classes would correspond to allowable trip limits of 2,000 (907 kg), 1,000 (454 kg), and 500 lb (227 kg) of red snapper. The license classes and criteria under this alternative are shown in the table below.

License class	1990–92 landings in 2 out of 3 years	Initial trip limit
1	More than 10,000 lb (4,536 kg)	2,000 lb (907 kg).
2	5,000 lb (2,268 kg) (but less than 10,000 lb (4,536 kg)	1,000 lb (454 kg).
3	2,500 lb (1,134 kg) but less than 5,000 lb (2,268 kg)	500 lb (227 kg).

The Council is considering other license limitation system alternatives or variations including: (1) Issuing licenses to vessels rather than persons; (2) in instances where the landings records of a vessel upon which a historical captain served are used to qualify for a license, issuing separate class (1) or class (2) licenses to the historical captain and the

vessel owner depending on the vessel's level of landings as shown by the records; (3) transferring licenses without restrictions; (4) placing no limitations on the ownership of licenses by one entity; (5) not allowing the transfer of landing records for a vessel for the 1990–92 period unless there is an agreement for transfer of the records between entities ownership vessel buyer and seller, the vessel's permit is transferred to an additional vessel by the same owner, or the vessel's landings records for 1990–92 were in a corporate name of a current owner; (6) establishing specific annual fishing season opening dates (the Council has not identified a preferred alternative at this time) and providing that after the season opening, the commercial red snapper fishery will be opened at noon on the first day of each month and closed at noon on the fifteenth day of each month until the commercial quota is reached and the season closed; (7) extending the term of the red snapper licensing indefinitely or until replaced by an alternate license management system; (8) establishing an appeals board consisting of designees of the directors of the state agencies with marine fisheries management authority to review disputes over landings records serving as a basis for license eligibility; and (9) allowing no allocation of the commercial red snapper quota for bycatch during the closed season.

In addition to the red snapper license limitation system, Amendment 15 would contain measures to: (1) Prevent possession of reef fish in excess of the recreational bag limit for a vessel that has on board or is tending any traps other than permitted reef fish traps or stone crab or spiny lobster traps; (2) increase the size limit for vermilion snapper from 8 to 10 inches total length (3.9 cm); remove sea bass, porgies, and grunts from management under the FMP and allow the states to manage these species; (3) close the commercial fishery for greater amberjack in the exclusive economic zone off west Florida during the spawning season (i.e., March through May); and (4) amend the recently implemented 20-fish aggregate bag limit measure, which applies to those species without specific individual bag limits under the FMP, so that it applies only to certain species (i.e., vermilion snapper, lane snapper, banded rudderfish, lesser amberjack, Almaco jack, gray triggerfish, and tilefish).

The public will be asked to comment on a scoping document for greater amberjack, lesser amberjack, Almaco jack, and banded rudder fish. Persons will be asked to provide their observations on the status of these stocks, localized abundance, changes in size or abundance over the past 10 years, whether additional regulation is needed, whether current rules should be modified, and the dependence of fishing sectors on these stocks. This information will be used to draft an options paper for a subsequent FMP amendment.

The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. Monday, April 14, 1997—Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL 33040.
2. Tuesday, April 15, 1997—Golden Gate Community Center, 4701 Golden Gate Parkway, Naples, FL 33999.
3. Wednesday, April 16, 1997—City Hall Auditorium, 300 Municipal Drive, Madeira Beach, FL 33708.
4. Thursday, April 17, 1997—County Commission Office, 200 East Green Street, Perry, FL 32348.
5. Monday, April 21, 1997—Larose Regional Park, 2001 East 5th Street, Larose, LA 70373.
6. Monday, April 21, 1997—Police Jury Annex, Courthouse Square, P.O. Box 366, Cameron, LA 70631.
7. Tuesday, April 22, 1997—J. L. Scott Marine Education Center, 115 East Beach Boulevard, US Highway 90, Biloxi, MS 39530.
8. Tuesday, April 22, 1997—Texas A&M Auditorium, 200 Seawolf Parkway, Galveston, TX 77553.
9. Wednesday, April 23, 1997—Holiday Inn on the Beach, 365 East Beach Boulevard, Gulf Shores, AL 36547.
10. Wednesday, April 23, 1997—Port Aransas Civic Center Auditorium, 710 West Avenue A, Port Aransas, TX 78373.
11. Thursday, April 24, 1997—National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.
12. Thursday, April 24, 1997—Port Isabel Community Center, 122 Fernandez, Laguna Vista, TX 78578.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**).

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

Dated: April 8, 1997.

Bruce Morehead,

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

[FR Doc. 97–9434 Filed 4–10–97; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 62, No. 70

Friday, April 11, 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

Animal and Plant Health Inspection Service

[Docket No. 97–015–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection which it utilizes in regulating the interstate movement of horses that have tested positive for equine infectious anemia.

DATES: Comments on this notice must be received by June 10, 19970 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–015–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–015–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding regulations for the interstate movement of horses that have tested positive for equine infectious anemia, contact Dr. Tim Cordes, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737-1231, (301) 734–3279; or e-mail: tcordes@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Jenkins, APHIS' Information Collection Coordinator, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: Communicable Diseases in Horses.

Type of Request: Approval of an information collection.

Abstract: APHIS regulates the interstate movement of horses that have tested positive for equine infectious anemia (EIA) in order to prevent the spread of this disease (9 CFR 75.4). Enforcing these regulations requires us to engage in a number of information gathering activities that enable us to accurately identify and track EIA reactors as they move interstate.

Specifically, this regulatory program requires the use of an official EIA test, a certificate allowing the interstate movement of an EIA reactor, and identification of the reactor. The program also involves the services of accredited veterinarians, State veterinary officials, laboratory/diagnostic/research facility personnel, and stockyard personnel, all of whom must engage in various recordkeeping and information collection activities.

We are seeking approval from the Office of Management and Budget (OMB) to use these forms and other information collection tools that make our EIA program possible.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection activity. We need this outside input to help us:

(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 our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0905 hours per response.

Respondents: State and Federal veterinarians, accredited veterinarians, laboratory/diagnostic/research facility personnel, stockyard personnel.

Estimated Number of Respondents: 10,053.

Estimated Numbers of Responses per Respondent: 101.

Estimated Total Annual Burden on Respondents: 91,925 hours.

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.

Done in Washington, DC, this 7th day of April 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–9359 Filed 4–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sandpoint Ranger District Packsaddle Final Environmental Impact Statement—Idaho Panhandle National Forests, Bonner County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement an environmental impact statement.

SUMMARY: The USDA Forest Service (Sandpoint Ranger District) will supplement the Packsaddle Final Environmental Impact Statement (FEIS) to disclose the potential environmental effects of a new alternative (Alternative 8) based on new information. The Project Area is within the Pend Oreille Ecosystem, Sandpoint Ranger District, Idaho Panhandle National Forests, Bonner County, Idaho and includes the Packsaddle Inventoried Roadless Area.

The new alternative would treat high severity root disease areas and begin converting timber stands away from root disease susceptible tree species (such as Douglas-fir and grand fir) to re-establish western white pine, western larch, and ponderosa pine. Alternative 8 also proposes to use prescribed burning to reduce fuel loadings and restore natural processes (such as fire) that are currently lacking in the Project Area. Alternative 8 would treat 1,703 acres (1,165 acres group and irregular group shelterwood, 369 acres group and modified group selection, 96 acres sanitation/salvage, and 73 acres visual improvement). This alternative also proposes to treat eight units over 40 acres in size (ranging from 45 to 240 acres). A combination of prescribed underburning, grapple piling, and limbing/lopping would be used to control fuel levels. This alternative would construct 3.4 miles of temporary roads which would be built for logging and post-harvest activities (such as prescribed burning and planting) access. These roads would be recontoured after these activities are complete. Additionally, Alternative 8 proposes to decommission 2.1 miles and totally close 4.0 miles of existing roads.

This supplement will tier to Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan), September 1987 and reference the Integrated Scientific Assessment from the Upper Columbia River Basin study.

DATES: Written comments and suggestions should be received on or before June 10, 1997.

ADDRESSES: Submit written comments and suggestions on the proposed management activities to Tony Erba, Project Leader, Sandpoint Ranger District, 1500 Hwy 2, Suite 110, Sandpoint, ID 83864.

FOR FURTHER INFORMATION CONTACT: Tony Erba, Team Leader, Sandpoint Ranger District, phone number (208) 263–5111.

SUPPLEMENTARY INFORMATION: The Packsaddle Draft Environmental Impact Statement was issued for public review and comment in June, 1994. The Final Environmental Impact Statement was completed in March, 1995. The Record of Decision was signed on May 3, 1996 under the authority of section 2001 of Public Law 104–19 (otherwise known as the Salvage Amendment). On July 2, 1996, Secretary of Agriculture Glickman issued a directive that salvage timber sale decisions in inventoried roadless areas were to be withdrawn from consideration until the Salvage Bill authority had expired. Thus, the Packsaddle Record of Decision was withdrawn.

Since that time, numerous field visits to the Project Area have been conducted to verify the root disease conditions discussed in the FEIS. We have discovered that the proposal of using group and modified group selection methods to treat the root disease problem (as described in the FEIS' Alternative 7) is not desirable because of:

(1) The need for continued access for treatment,

(2) The high potential for regeneration damage while removing future mortality,

(3) The threat to established regeneration with future prescribed burning opportunities, and

(4) The expected mortality level would predispose the stand to a catastrophic wildfire since there would be greater amounts of dead and down material created to carry a fire from the ground into the tree crowns.

Additionally, these treatments would essentially postpone treatment on the remaining stands while allowing the root disease situation to continually worsen.

On National Forest lands, the Forest Service is responsible for promoting healthy ecosystems and restoring deteriorated ecosystems to provide for diversity of plant and animal communities, long-term resource sustainability, and future management options. This must be done in the context of meeting people's needs. Re-establishing appropriate tree species composition, and the processes that maintain it (i.e., fire), are important steps towards the goal of restoring ecosystems in the Packsaddle Project Area. Focusing the proposed timber harvest and associated prescribed burning activities in the highest severity root disease areas are critical to achieve this goal. These high severity areas represent clear examples where timber stand dynamics are operating well outside their natural potential (low tree densities and shortened life cycles for natural regeneration). Our analysis shows that conditions will continue to worsen, resulting in a further decline of ecosystem health and increased wildfire hazard if no action is taken. Given our mission to sustain healthy ecosystems into the future, it would be irresponsible of me to let these problems continue.

We have looked at a variety of alternatives that address the root disease problem at varying levels and consider this project to be the first of a multi-step process to address ecosystem needs in the Packsaddle Project Area. We have developed Alternative 8 to effectively address the root disease problem while protecting other resource values in the Project Area. Alternative 8 proposes to use more intensive harvest methods (i.e., irregular group shelterwood) in large-sized units to begin converting these affected stands to tree species less susceptible to root disease infection. Several of these units would exceed 40 acres (combined areas ranging from 45 to 255 acres). By focusing on using a landscape scale management approach, Alternative 8 best approaches the level of disturbance that typically occurred prior to when fires were suppressed on a regular basis. It would also minimize the impacts on other affected resources. I consider Alternative 8 to be a responsible approach to addressing the root disease problem in light of the public comments submitted on this project and our recent field visits.

The Record of Decision is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in June, 1997. At that time, the EPA will publish a Notice of Availability of the final environmental impact statement in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement 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 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the new alternative, comments should be as specific as possible. It is also helpful if comments refer to specific pages of the

supplement. Comments may also address the adequacy of the supplement or the merits of the new alternative formulated and discussed in the supplement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Sandpoint Ranger District, 1500 Hwy 2, Suite 110, Sandpoint, ID, 83864.

Dated: March 27, 1997.

David S. Dillard,

District Ranger.

[FR Doc. 97–9357 Filed 4–10–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on May 30, 1997 at the Snider Work Center 553, W. Snider Road, Forks, Washington. The meeting will begin at 9:30 a.m. and continue until 3:00 p.m. The agenda topics for this meeting are (1) Update on local projects; (2) Adaptive Management Area discussion; (3) flood damage and its effects on roads and restoration rojects; (4) open public forum. All Olympic Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211 or Ronald R. Humphrey, Forest Supervisor, at (360) 956–2301.

Dated April 3, 1997.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 97–9308 Filed 4–10–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper Nanticoke River Watershed, Kent and Sussex Counties, Delaware

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Nanticoke River Watershed Land Treatment Supplement No. 1, Kent and Sussex Counties, Delaware.

FOR FURTHER INFORMATION CONTACT: Elesa K. Cottrell, State Conservationist, Natural Resources Conservation Service, 1203 College Park Drive, Suite 101, Dover, Delaware 19904–8713, telephone (302) 678–4160.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Elesa K. Cottrell, State Conservationist, has determined that an environmental impact statement is not needed for this project.

The measure concerns a plan for watershed protection. The planned works of improvement include waste management systems, wetland wildlife habitat enhancement, forest management practices, and accelerated technical assistance for land treatment.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Elesa K. Cottrell.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Upper Nanticoke River Watershed, Delaware Finding of No Significant Impact

(Catalog of Federal Domestic Assistance Under No. 10.901, Resource Conservation and Development, and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Elesa K. Cottrell,

State Conservationist.

[FR Doc. 97–9312 Filed 4–10–97; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 12, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Janitorial/Custodial
USARC #1
East Point, Georgia
NPA: WORKTEC, Jonesboro, Georgia

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–9404 Filed 4–10–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 12, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Pen, Cushion Grip, Transparent

7520–01–424–4866

7520–01–424–4872

7520–01–424–4884

7520–01–424–4875

7520–01–424–4847

7520–01–424–4859

NPA: Alphapointe Association for the Blind, Kansas City, Missouri.

Service

Administrative Services

Department of Health and Human Services, Region 8

Denver, Colorado

NPA: Bayaud Industries, Inc., Denver, Colorado

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–9405 Filed 4–10–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 12, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 23, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 43523) of proposed addition to the Procurement List. Comments were received from a contractor whose contract to perform this service was terminated for default on March 19, 1997. The contractor suggested that loss of this contract would have a severe impact on its sales. The contractor also asserted that this service was not appropriate for people with severe disabilities because the buildings are not accessible to them, some of the work involves high climbing and use of hazardous materials, and the facility experiences daily unscheduled evacuations and venting of hazardous substances. The contractor attached letters from eight persons familiar with the facility to support its contentions. The contractor claimed that addition of this service to the Procurement List would put a lot of people with families out of jobs, and that many of these people are from socially disadvantaged groups.

The contractor was terminated for default after it informed the Government contracting activity that it was terminating its employees immediately, having failed to pay them because the Internal Revenue Service (IRS) is enforcing a levy for long-term failure by the contractor to pay employment taxes. IRS has also seized the vehicles the contractor used to perform the service. A debarment of the contractor for Service Contract Act violations is pending final review at the Department of Labor. The Government contracting

activity determined the contractor nonresponsible for extensions of its contract to perform the service, shortly before the contractor's actions made the default termination necessary.

By its own actions, the contractor lost its contract to perform this janitorial service and has excluded itself from future contracts. Consequently, the Committee has concluded that the addition of the service to the Procurement List will not be the cause of any severe adverse impact on the contractor. Similarly, loss of jobs for the contractor's employees has occurred because of the contractor's actions, not the Committee's.

Most of the concerns over capability of people with severe disabilities to perform the janitorial service relate to special areas called ''clean rooms,'' which have been removed from the contract requirements for the service as it will be performed by the nonprofit agency. In addition, the nonprofit agency is experienced in performing services at the same and a neighboring Government installation, in buildings which are no more accessible to people with severe disabilities than those involved in this janitorial service. Many people with severe disabilities have the agility and other abilities required to work safely on this service. Accordingly, the Committee has concluded that the nonprofit agency is capable of performing the service.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial
Cape Canaveral Air Station and Annexes
Cape Canaveral, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–9406 Filed 4–10–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 12, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 31, February 14 and 21, 1997 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 4721, 6946 and 8003) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, Naval Reserve Center, Kearny, New Jersey
Janitorial/Guard Service, VA Outpatient Clinic, Brighton, New York
Switchboard Operation, Holloman Air Force Base, New Mexico

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–9407 Filed 4–10–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 12, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 7, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (62 FR 5797) of proposed addition to the Procurement List. Comments were received from the most recent contractor, whose contract was awarded in 1994. The contractor indicated that it

had filed for bankruptcy reorganization that year. Although it has emerged from this reorganization, the contractor expressed concern over the loss of any sales and the impact such loss might have on its ability to meet its repayment schedule. The contractor also indicated that any of its employees who would be displaced might have difficulties locating other work in the local market.

The contract represents a very small percentage of the contractor's total sales. In addition, the nonprofit agency will give the contractor the opportunity to compete for subcontracts to perform the embroidery work on the insignia to the contractor. Moreover, the contractor has begun doing embroidery subcontracting for an interment flag being produced under the Committee's program by another nonprofit agency. Consequently, the Committee does not believe the addition of the insignia to the Procurement List will have a severe adverse impact on the contractor, and the Committee further believes the chance of the contractor's employees being displaced by the addition is minimal.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Insignia, Embroidered, Marine PFC 8455–00–292–9558.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–9408 Filed 4–10–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

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, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–103R. Applicant: Stevens Institute of Technology, Castle Point on Hudson, Hoboken, NJ 07030. Instrument: Stopped-Flow/Scanning Spectrometer, Model SX.18MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: Original notice of this resubmitted application was published in the **Federal Register** of October 30, 1996.

Docket Number: 97–024. Applicant: Stanford University/University of California, Berkeley, Stanford, CA 94305. Instrument: Electron Energy Analyzer, Model Scienta 200. Manufacturer: Scienta Instrument AB, Sweden. Intended Use: The article is intended to be used to investigate by photoelectron spectroscopy the properties of high temperature superconductors, magnetic materials and other materials and phenomena with the objective of obtaining a better fundamental understanding of these materials. Application accepted by Commissioner of Customs: March 11, 1997.

Docket Number: 97–025. Applicant: Massachusetts Institute of Technology, Center for Cancer Research, 77 Massachusetts Avenue, Building E17–340, Cambridge, MA 02139. Instrument: Fish Tank System. Manufacturer: Klaus-Jurgen Schwarz, Germany. Intended Use: The instrument will be used for the study of the early development of the zebrafish embryo in order to identify genes that are required for a fish egg to develop normally into a perfect living fish embryo and ultimately into an adult fish. It is expected that the genes identified will help in understanding what goes wrong in human development that can lead to birth defects. Application accepted by Commissioner of Customs: March 11, 1997.

Docket Number: 97–026. Applicant: Skidmore College, 815 N. Broadway, Saratoga Springs, NY 12866. Instrument: Electron Microscope with Accessories, Model JEM–1010. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument will be used for analysis of simple thin sections of plants, animals and fungi at magnifications of 3,000 to 150 000. The objective of the investigations will be to learn how plant cells secrete materials to the external world and methods that the plants use internally to package secretory materials. In addition, the instrument will be used in several undergraduate biology courses to train students to become cell biologists. Application accepted by Commissioner of Customs: March 11, 1997.

Docket Number: 97–029. Applicant: University of California, Department of Buying and Contracting, Regent Administrative Center 1B29, Campus Box 8, Boulder, CO 80309. Instrument: Color Center Laser. Manufacturer: GWU Lasertechnik, Germany. Intended Use: The instrument will be used for the study of InGaAs/InP heterostructures. Specifically, investigations will be conducted of the optical and thermal properties of these structures to determine the radiative quantum efficiency of the structures by measuring the heating of the device as a function of excitation energy. Application accepted by Commissioner of Customs: March 18, 1997.

Docket Number: 97–030. Applicant: Florida State University, National High Magnetic Field Laboratory, 1800 East Paul Dirac Drive, Tallahassee, FL 32306–4005. Instrument: ICP Mass Spectrometer, Model ELEMENT. Manufacturer: Finnigan MAT, Germany. Intended Use: The article is intended to be used to investigate chemical processes that take place in the earth and at the earth's surface. The research is geared towards the identification of trace element or isotope ratios most sensitive to a chemical process. After identification of the trace element and

isotope ratios, these ratios are used for quantification of the important processes. In addition, the instrument will be used for educational purposes in the courses GLY 5298 ''Advanced Topics in Geochemistry'' and GLY 5261 ''Advanced Topics in Geochronology.'' Application accepted by Commissioner of Customs: March 25, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–9429 Filed 4–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Woods Hole Oceanographic Institution; 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, N.W., Washington, D.C.

Docket Number: 96–148. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543–1531. Instrument: Mass Spectrometer, Model MAT ELEMENT. Manufacturer: Finnigan MAT, Germany. 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: (1) A magnetic sector analyzer for best sensitivity to study low levels of ^{230}Th and ^{231}Pa in seawater and (2) fastest sample throughput to meet laboratory workloads. 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. 97–9430 Filed 4–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032497B]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings; correction.

SUMMARY: This public meeting notice for the 92nd meeting of the Western Pacific Fishery Management Council was originally published in the March 31, 1997, issue of the **Federal Register**. Numerous corrections have made it necessary to reprint this notice in its entirety; therefore, this notice supersedes the March 31 publication.

DATES: The meetings will be held on April 21–25, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Ala Moana Hotel, Garden Lanai and Pakalana/Anthurium Rooms, Honolulu, HI; telephone: (808) 855–4811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: On March 31, 1997 (61 FR 15157), a public meeting notice for the Western Pacific Fishery Management Council was published. Due to various corrections, it is hereby reprinted in its entirety for ease of reading, as follows:

A meeting of the full Advisory Panel (AP) will be held on Monday, April 21, 1997, from 8:00 a.m. to 5:30 p.m. On Tuesday, April 22, 1997, the Pacific Insular Area Fishing Agreement (PIAFA) Working Group will meet from 9:00 a.m. to 1:00 p.m., and the Western Pacific Fishery Information Network (WpacFIN) Fishery Data (Coordinating) Committee will meet from 1:00 p.m. to 5:00 p.m. The Council's Standing Committees will meet on Wednesday, April 23, 1997, from 7:30 a.m. to 5:30 p.m. The Council's Vessel Monitoring System (VMS) Committee will meet concurrently with the Enforcement Standing Committee. The full Council will meet from 8:00 a.m. to 5:00 p.m. on Thursday, April 24, 1997, and from 9:00 a.m. to 3:30 p.m. on Friday, April 25, 1997.

The Council will discuss and may take action on the following agenda items:

1. Report on the AP meeting and recommendations to the Council;
2. Reports from the islands;
3. Reports on enforcement issues, including;
(a) U.S. Coast Guard report,
(b) NMFS activities and VMS update,
(c) VMS data request for research, and
(d) status of violations.
4. Magnuson-Stevens Fishery Conservation and Management Act requirements for Fishery Management Plan (FMP) amendments, including:
(a) consistency of definitions;
(b) bycatch;
(c) fishing sectors (commercial, recreational, charter);
(d) essential fish habitat;
(e) fishing communities; and
(f) overfishing.
5. Pelagic fishery issues, including:
(a) pelagic fisheries research and data reporting;
(b) determination of total allowable level of foreign fishing for American Samoa, Guam, and the Northern Mariana Islands (NMI);
(c) status of bycatch/incidental take, interaction issues and assessments for turtles, sharks and seabirds;
(d) gear conflict between handliners and longliners;
(e) Scientific and Statistical Committee (SSC) recommendations;
(f) public hearing;
(g) report on South Pacific Tuna treaty review and future international meetings; and
(h) other issues.
6. Crustacean fishery issues, including:
(a) Recommend that the Regional Administrator issue a final rule establishing a VMS program for the Northwestern Hawaiian Islands (NWHI) lobster fishery;
(b) possible changes to the NWHI lobster fishery regulations under the framework procedures of the FMP, regarding: model to estimate exploitable lobster population in the NWHI; risk analysis estimation procedure; high-grading during 1996 NWHI lobster season; review harvest guideline for the 1997 NWHI lobster season for possible adjustment; grandfathered permit transferability issue; NWHI revised lobster catch report form; and impact of expanding live lobster product;

(c) NMFS lobster research activities; industry concerns about the fishery; summary of Review Panel's report/recommendations; Crustacean Plan Team/Hawaii-Crustacean Advisory Panel recommendations; SSC recommendations; public hearing; and

(d) other issues.

7. Reports from fishery agencies and organizations.

8. Bottomfish issues, including:

(a) overfished Main Hawaiian Islands (MHI) onaga and ehu (State of Hawaii Draft Management Plan and Council's Management Plan);

(b) status of NWHI management system;

(c) SSC recommendations;

(d) public hearing; and

(e) other issues.

9. Native rights and indigenous fishing issues, including:

(a) PIAFA requirements such as conservation plans for American Samoa, Guam, the NMI and other U.S. possessions;

(b) report of PIAFA Working Group;

(c) status of AP for demonstration projects;

(d) status of Commonwealth of NMI turtle study;

(e) SSC recommendations;

(f) Native Rights Committee recommendations;

(g) public hearing; and

(h) other issues.

10. Ecosystems and Habitat, including:

(a) summary of recent activities; and

(b) SSC recommendations.

11. Precious corals, including:

(a) application for permit to harvest precious corals;

12. Program planning, including:

(a) education and outreach program; and

(b) status of WpacFIN.

13. Administrative matters, including:

(a) Statement of Organization, Practices, and Procedures revision;

(b) administrative reports;

(c) future meetings and travel; and

(d) other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 3, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–9325 Filed 4–10–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications for the proposed consolidations of:

(1) International Falls Weather Service Office (WSO) into the future Duluth and Eastern North Dakota Weather Forecast Offices (WFO);

(2) Abilene WSO into the future San Angelo WFO; and

(3) Victoria WSO into the future Corpus Christi WFO. In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed consolidation certifications.

DATES: Comments are requested by June 10, 1997.

ADDRESSES: Requests for copies of the proposed consolidation packages should be sent to Tom Beaver, Room 09356, 1235 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) a draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) a comparison of the services provided within the service area and the services to be provided after such action;

(4) a description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) an identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable); and

(7) a letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. At their December 14, 1995 meeting the numbers ''* * * resolved that the MTC modify its procedure to eliminate proposed certification consultations of noncontroversial closings, consolidations, relocations, and automation certifications but will provide final consultation on certifications after public comment and before final submission to the Secretary of Commerce.''

The above actions are all considered noncontroversial by the NWS. Also these proposed certifications do not include the documentation supporting them which is too voluminous to publish. Copies of the supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating the offices.

Dated: April 7, 1997.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–9327 Filed 4–10–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the consolidation, automation, and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Madison Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Milwaukee, Green Bay, and LaCrosse Weather Forecast Offices (WFOs);

(2) Peoria WSO which will be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Central Illinois and Quad Cities WFOs;

(3) Rochester WSO which will be automated at FAA Weather Observation Service Level A and have its services consolidated into the future Buffalo and Binghamton WFOs; and

(4) Residual Tucson WSO which will be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Tucson WFO. In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed consolidation, automation, and closure certifications.

DATES: Comments are requested by June 10, 1997.

ADDRESSES: Requests for copies of the proposed consolidation, automation and closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations, automations, and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation, automation, and closure certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable);

(7) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and in-place supplementary data program at the responsible WFO(s);

(8) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(9) An Air Safety Appraisal for offices which are located on an airport; and

(10) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forgo the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to consolidating, automating, and closing these offices.

Dated: April 7, 1997.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–9327 Filed 4–10–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the automation and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Residual Indianapolis Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Indianapolis WFO;

(2) Residual Kansas City Weather Service Office (WSO) which will be automated at FAA Weather Observation

Service Level A and with services being provided by the future Kansas City/Pleasant Hill WFO;

(3) Lansing WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Grand Rapids WFO;

(4) Lincoln WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Omaha WFO;

(5) Residual Louisville WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Louisville WFO;

(6) Residual Milwaukee WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Milwaukee WFO;

(7) Rockford which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Chicago and Quad Cities WFOs;

(8) Bridgeport WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future New York City WFO; and

(9) Newark WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future New York City WFO.

In accordance with Pub. Law 102–567, the public will have 60 days in which to comment on these proposed automation and closure certifications.

DATES: Comments are requested by June 10, 1997.

ADDRESSES: Requests for copies of the proposed automation and closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these automations and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed automation and closure certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network.

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO(s);

(7) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(8) An air Safety Appraisal for offices which are located on an airport; and

(9) A letter appointing the liaison officer. These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to automating and closing these offices.

Dated: April 7, 1997.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–9328 Filed 4–10–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary proposes to add a routine use to an existing system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on May 12, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The complete inventory of Office of the Secretary record system notices 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 proposed altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on April 7, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to

paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 8, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files *(December 4, 1995, 60 FR 62078).*

* * * * *

CHANGES:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Add a new paragraph 'To the Presidential Advisory Committee on Gulf War Veterans' Illnesses for purposes of carrying out those functions as set forth in Executive Orders 12961 and 13034 or such further Order as directed by the President.'

* * * * *

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files.

SYSTEM LOCATION:

Department of Defense Persian Gulf Veterans Illnesses Investigative Team, 5205 Leesburg Pike, Falls Church, VA 22041–3881; and Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

Comprehensive Clinical Evaluation Program, 5205 Leesburg Pike, Skyline 1, Suite 1135, Falls Church, VA 22041–3802.

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, ATTN: MCHB-DE-HR, Aberdeen Proving Ground, MD 21010–5422.

U.S. Army Joint Services Support Group, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.

Naval Health Research Center, Division of Clinical Epidemiology, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who served in Operation Desert Storm and/or Operation Desert Shield who feel they may have been exposed to biological, chemical, disease, or environmental agents. Those individuals may contact the Persian Gulf Veterans Illnesses Investigative Team by dialing 1–800–472–6719 to report experiences of unusual illness or health conditions following service during the Persian Gulf conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in Persian Gulf military operations, perceived exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical, disease, or environmental agents.

The system contains information from unit and historical records and information provided to the Department of Defense by individuals with first-hand knowledge of reports of possible biological, chemical, disease, or environmental incidents.

Information from health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf is also included. Records include those documents, files, and other matter in the medical, operational, and intelligence communities that could relate to possible causes of Persian Gulf War Veterans illnesses.

Records of diagnostic and treatment methods pursued on subjects following reports of possible incidental exposure are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, 10 U.S.C. 136, and E.O. 9397 (SSN).

PURPOSE(S):

Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, disease, or environmental agents incident to service in the Persian Gulf War and to conduct scientific or related studies or medical follow-up programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs and the Social Security Administration for appropriate consideration of individual claims for benefits for which that agency is responsible.

To the Presidential Advisory Committee on Gulf War Veterans' Illnesses for purposes of carrying out those functions as set forth in Executive Orders 12961 and 13034 or such further Order as directed by the President.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders; electronic records are stored on magnetic media; microfilm/microfiche are maintained in appropriate storage containers.

RETRIEVABILITY:

Records are retrieved by case number, name, Social Security Number or service number.

SAFEGUARDS:

Access to areas where records maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the Persian Gulf Veterans Illnesses Investigative Team under the oversight of the Assistant Secretary of Defense (Health Affairs) until completion of the Team's investigative mission. Upon disbanding of the Team, custody of the records will be transferred to OASD(HA) where they will be held for five years, and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Persian Gulf War Veterans Illnesses Investigative Team, Suite 810, 5205 Leesburg Pike, Falls Church, VA 22041–3881, or to the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Persian

Gulf War Veterans Illnesses Investigative Team, Suite 810, 5205 Leesburg Pike, Falls Church, VA 22041–3881, or to the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

CONTESTING RECORDS PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is from the individuals themselves, witnesses to a possible agent event, health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf, as well as extracts from historical records to include: personnel files and lists, unit histories, medical records, and related sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–9342 Filed 4–10–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Environmental Advisory Board

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATES: The meeting will be held from 8:00 a.m., Tuesday, May 6, 1997, to 11:00 a.m. Thursday, May 8, 1997.

ADDRESSES: The meeting will be at the Double Tree Hotel, 300 Army/Navy Drive, Arlington, (Pentagon City), Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Rubenstein, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–1257.

SUPPLEMENTARY INFORMATION: The theme of the subject meeting on ''Non-Indigenous Species and Our Nation's Waterbodies'' follows:

The U.S. Army Corps of Engineers plays a vital role in protecting America's waters from non-native predators, parasites, pathogens and competitors. The 55th Meeting of the Chief of Engineers Environmental Advisory Board (EAB) will offer participants with an important opportunity to examine and analyze Corps research programs designed to identify, access and manage non-indigenous species that interfere with the valued uses of our Nation's waterbodies.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–9336 Filed 4–10–97; 8:45 am]

BILLING CODE 3710–92–M

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 10, 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: April 7, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Public Libraries Survey, FY 1996–FY 1998.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 57.

Burden Hours: 1,710.

Abstract: The Public Libraries survey has been conducted annually since it first collected FY 1990 data. The Data collection provides a national census of public libraries and their public library service outlets. It includes descriptive data for each state and for each individual public library. The data are collected entirely electronically and the survey is designed and coordinated by a federal/state cooperative system. Data collected allow analysis of such important variables as expenditures, staffing, size of collection and services comparing among libraries of similar size (as measured by population of legal service area). This information is used for policy decisions in the areas of legislation, funding and resource allocation. With this complete file of administrative entities, it is possible to

select samples for specialized surveys for example on children's services or on access for persons with disabilities.

[FR Doc. 97–9341 Filed 4–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Savannah River Operations Office Interim Management of Nuclear Materials at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Supplemental record of decision and supplement analysis determination.

SUMMARY: The U.S. Department of Energy (DOE) prepared a final environmental impact statement (EIS), ''Interim Management of Nuclear Materials'' (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their ultimate disposition are made and implemented. Some of the particular materials considered in the EIS could present environmental, safety and health vulnerabilities in their current storage condition.

On December 12, 1995, DOE issued a Record of Decision (ROD) and Notice of Preferred Alternatives, 60 FR 65300 (December 19, 1995), on the interim management of several categories of nuclear materials at the SRS, including Taiwan Research Reactor (TRR) spent nuclear fuel rods. DOE decided to stabilize 81 TRR spent fuel rods because the TRR fuel had failed,[1] presenting environmental, safety and health vulnerabilities that should be corrected. At the time of this decision, DOE stated that, if additional TRR spent fuel failed, DOE would categorize the failed fuel as Candidates for Stabilization and perform appropriate National Environmental Policy Act (NEPA) review and evaluation for stabilization of the material.

On February 8, 1996, DOE issued a Supplemental ROD, 61 FR 6633 (February 21, 1996), for the stabilization of Mark–16 and Mark–22 fuels, and other aluminum-clad targets. On September 6, 1996, DOE issued a second Supplemental ROD, 61 FR 48747 (September 13, 1996), for the stabilization of plutonium-239 solutions, a neptunium-237 solution and obsolete targets.

DOE has now further decided, because of health and safety vulnerabilities, to stabilize the remaining TRR spent nuclear fuel located in the Receiving Basin for Offsite Fuels (RBOF) at the SRS, using the F-Canyon and FB-Line facilities. The TRR spent nuclear fuel to be stabilized consists of the equivalent of 310 fuel rods (some of the rods were fragmented due to conditions in Taiwan) in 62 aluminum canisters stored underwater in RBOF. DOE has decided to stabilize the TRR spent nuclear fuel because additional TRR spent fuel in at least two of the canisters has failed, and DOE believes that the rest is likely to exhibit signs of failure at unpredictable intervals in the near future. All 62 canisters contain TRR fuel that was subjected to the same poor storage conditions in Taiwan, and the same physical stress due to transportation conditions during shipment from Taiwan to SRS, creating a propensity for corrosion of the fuel elements' cladding. Once the cladding has failed, the failure cannot be arrested, even by the excellent water quality conditions in RBOF. Thus, fission products will continue to be released into RBOF.

By stabilizing the TRR fuel, DOE is taking prudent management steps to alleviate the environmental, safety and health vulnerabilities associated with the continued wet storage and degradation of the TRR spent fuel. DOE considered interim measures to improve storage conditions, such as those described in the Interim Management of Nuclear Materials (IMNM) EIS, but DOE believes that an alternate storage arrangement that eliminates contact between the fuel and water cannot be implemented in a timely manner. For example, dry storage facilities being planned on an aggressive schedule for domestic and foreign research reactor spent fuel will not be available until approximately 2003. In contrast, DOE expects that stabilizing the fuel by processing it in the F-Canyon and FB-Line facilities can be accomplished in 6 to 12 months.

The plutonium separated by the stabilization process (about 15 kilograms) will be stored at the SRS in existing vaults and then in the new Actinide Packaging and Storage Facility, when it becomes operational, until DOE implements long-term storage and disposition decisions on weapons usable forms of plutonium, which were published in the ROD for the Storage and Disposition of Weapons-Usable Fissile Material (62 FR 3014, January 21, 1997). A Departmental commitment to prohibit the use of plutonium-239 and weapons-usable highly enriched uranium separated and/or stabilized during the phaseout, shutdown, and cleanout of weapons complex facilities for nuclear explosive purposes was approved by the Secretary of Energy on December 20, 1994, and DOE is considering options for placing this material under international safeguards.

FOR FURTHER INFORMATION CONTACT: For further information on the interim management of nuclear materials at the SRS or to receive a copy of the final EIS, the initial ROD or the subsequent supplemental RODs contact: Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804–5031, (800) 242–8259, Internet: drew.grainger@srs.gov

For further information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE prepared a final environmental impact statement (EIS), ''Interim Management of Nuclear Materials'' (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage nuclear materials at the SRS, Aiken, South Carolina, until decisions on their ultimate disposition are made and implemented. In the Interim Management of Nuclear Materials (IMNM) EIS, DOE evaluated the impacts of several stabilization alternatives and a ''No Action'' alternative for all Taiwan Research Reactor (TRR) spent nuclear fuel in RBOF. The estimates of the potential impacts included normal operations, waste generation, potential accidents, and cumulative impacts. In each case, the potential impacts for each stabilization alternative were estimated based on the entire SRS inventory of TRR spent fuel, the equivalent of 391 spent fuel rods in 143 aluminum canisters. As a result, the potential impact of stabilizing all the TRR spent fuel by processing the material in F-Canyon and FB-Line, as well as the potential impacts from the other alternatives, was analyzed and documented in the IMNM EIS.

DOE previously has issued three RODs based on the IMNM EIS, regarding the stabilization of nuclear materials at the SRS. In the first ROD, 60 *Fed Reg* 65300 (December 19, 1995), DOE determined, as relevant here, that 81

[1] The term ''failed'' means that the cladding on the fuel has been breached. The ROD, 60 Fed. Reg. 65300 (December 19, 1995), stated that failed fuel is indicated by gas releases from a fuel storage canister or visible failure of the cladding or canisters.

failed TRR spent nuclear fuel rods (contained in 81 canisters) would be stabilized by processing the material to a metal through F-Canyon and FB-Line to address environmental, safety and health vulnerabilities. In that ROD, DOE also determined that the remaining intact TRR fuel rods would remain in interim wet storage in RBOF unless they failed. As stated in the ROD, if DOE determined that additional fuel, targets, or canisters have failed, as indicated by gas releases from a canister, or visible failure of cladding or canisters, DOE would categorize those materials as Candidates for Stabilization. The ROD further states that DOE would perform the appropriate NEPA review and evaluation for the stabilization of any additional materials in RBOF that may be determined at a later date to have failed (e.g., Supplement Analysis). Stabilization of the 81 canisters of failed TRR spent fuel is currently being completed.

Two canisters of TRR fuel, previously believed to contain intact fuel, are now releasing gas, and therefore have been categorized as containing failed fuel. DOE believes that the remaining TRR spent fuel is likely to fail at unpredictable times in the near future. All 62 canisters contain TRR fuel that was subjected to the same poor storage conditions in Taiwan, and the same physical stress due to transportation conditions during shipment from Taiwan to SRS, creating a propensity for corrosion of the fuel elements' cladding. Once the cladding has failed, the failure cannot be arrested, even by the excellent water quality conditions in RBOF. Thus, fission products will continue to be released into RBOF.

Interim Management of Nuclear Materials EIS

The IMNM EIS considered the interim management of certain nuclear materials at the SRS. These materials included 143 canisters containing TRR spent nuclear fuel rods that were stored in RBOF. The TRR spent nuclear fuel rods are natural uranium metal clad in aluminum.

At the time the EIS was prepared, DOE knew the cladding on at least 81 of the fuel rods was failed as a result of storage conditions in Taiwan. In about 1990, prior to shipping the TRR spent fuel to the United States, the failed fuel was placed in aluminum canisters, one failed fuel rod per canister. Each canister was then drained of any water that entered the canister, filled with an inert gas, and sealed so that water in the storage pool would not come into contact with the failed fuel.

The 310 TRR fuel rods that were believed to be intact (i.e., those that indicated no visible breach in the cladding) were placed in aluminum canisters for handling and storage purposes. Five rods were loaded in each of the canisters, for a total of 62 canisters. The canisters were designed to be loaded from the side. The opening for loading the rods extended almost the entire length of the canister, and a cover was latched in place after loading was completed. The covers (and the canisters) were designed with slots to allow water into the canisters. The overpack canisters were designed to facilitate handling and storage, not to prevent the contact of the fuel rods with storage pool water.

The IMNM EIS evaluated the potential environmental impact of several alternatives for stabilizing the failed TRR fuel. These alternatives included processing the fuel to either a metal or oxide form, placing the material in dry storage, processing the material for vitrification at the Defense Waste Processing Facility, and vitrification in F-Canyon. DOE also considered continued wet storage of the material, i.e., the ''No Action'' alternative. DOE performed the evaluation of the potential impacts of these alternatives, assuming all the material—i.e., all 143 canisters of TRR spent fuel—would be stabilized, although the proposed action involved only 81 canisters (containing 81 failed fuel rods). A summary of the potential impacts from the alternatives was presented in Table 2–12 of the IMNM EIS.

By mid-1995, DOE had determined that 16 (of the 81) canisters containing failed TRR spent nuclear fuel had deteriorated to the point that the canisters were releasing gas and, as a consequence, radionuclides into the water of RBOF. DOE proposed the 81 canisters of TRR spent fuel as Candidates for Stabilization because: the release of hydrogen gas indicated that the canisters likely would not prevent water from coming into contact with the failed fuel or prevent radionuclides from being released into the storage pool; the presence of hydrogen gas indicated fuel corrosion was occurring; and the failure of any more canisters was certain to result in additional radionuclides being released into RBOF, since once corrosion has begun, it cannot be arrested. DOE also decided that the remaining 62 canisters of presumed ''intact'' TRR fuel should be considered stable for interim wet storage over about the next ten years.

In a ROD issued on December 12, 1995, 60 FR 65300 (December 19, 1995), DOE decided to stabilize the 81 failed TRR spent fuel rods by implementing the Processing to Metal alternative described and analyzed in the IMNM EIS. In addition, DOE concluded that if, ''after removing * * * failed TRR fuel * * * from RBOF, DOE determines that additional fuel * * * or canisters have failed, as indicated by gas releases from a canister, or visible failure of cladding or canisters, DOE would categorize those materials as Candidates for Stabilization. DOE would perform the appropriate * * * [NEPA] review and evaluation for the stabilization of any additional materials in RBOF that may be determined at a later date to have failed (e.g., a Supplement Analysis).'' Id. At 60 FR 65313.

Environmental Impacts of Alternatives

In the IMNM EIS, DOE evaluated the impacts of several stabilization alternatives (i.e., Processing to Metal, Processing to Oxide, Improving Storage, Processing and Storage for Vitrification in the Defense Waste Processing Facility, and Vitrification in F-Canyon) and a ''No Action'' alternative. For each alternative, the IMNM EIS estimated the potential impacts of stabilizing all of the TRR spent nuclear fuel (both failed fuel and that believed to be intact), including normal operations, waste generation, potential accidents, and cumulative impacts. In each case, the potential impacts for each stabilization alternative were estimated based on the entire SRS inventory of TRR spent fuel. As a result, the potential impact of stabilizing all the TRR spent fuel by Processing to Metal, as well as the potential impacts from the other alternatives, was analyzed and documented in the IMNM EIS.

Since discovering that additional TRR fuel has failed, DOE has re-evaluated the stabilization alternatives in the IMNM EIS to ensure that the analysis remains valid. In the IMNM EIS, DOE concluded that these alternatives would take from four to nine years to implement completely for the TRR spent nuclear fuel, while the preferred alternative of processing TRR spent fuel to a metal could be implemented more quickly. DOE believes that the estimates of time to implement TRR spent nuclear fuel stabilization alternatives in the IMNM EIS are still accurate. DOE expects that stabilization of the remaining TRR spent fuel in RBOF could be completed in 6 to 12 months.

As part of its re-evaluation, DOE considered interim storage methods that could be implemented in accordance with the No Action alternative. Interim storage methods would involve canning the TRR spent nuclear fuel in RBOF and placing the material back in wet storage.

To assure safe storage of the TRR spent fuel, vacuum drying capability would be needed in RBOF. High temperature treatment, e.g., heating to ≥200 °C, would also likely be required for failed TRR fuel. Drying and heating would be necessary because water, beyond a minimal amount, must be removed from the fuel to prevent continued corrosion and gas generation that could create unpredictable and unmonitored conditions inside the fuel storage container. The SRS does not currently have the capability to either dry or heat-treat spent fuel, and could not develop such a capability for several years. Additionally, the technology to heat-treat uranium metal fuel with failed cladding is undeveloped and requires research. DOE does not believe that treatment and canning could be satisfactorily implemented before stabilization by processing to a metal could be accomplished.

Continuing to store the fuel in RBOF is not desirable because it would exacerbate the corrosion of the fuel and result in continued releases of fission products and, eventually, metal and oxide particles in the basin water. These releases would subject workers to unnecessary radiation exposure and would present an environmental, safety and health vulnerability. Therefore, continued storage would do nothing to resolve current concerns regarding wet storage of TRR spent fuel.

Furthermore, it would not be practical to remove individual failed rods from the TRR fuel canisters because no efficient method to identify a failed fuel rod exists. An inspection of the cladding surface of each and every rod through magnification or, more likely, nondestructive testing would be required to identify the existence and location of cladding penetration. Based on previous experience with contaminated, but unirradiated, fuel, an inspection of this magnitude could take a year to complete, and stabilization actions would still be required for the failed TRR fuel. As a result, this method would not resolve current concerns regarding TRR fuel corrosion.

Decision

In the 1995 ROD, 60 FR 65300 (December 19, 1995), DOE decided to stabilize 81 TRR spent nuclear fuel rods by implementing the ''Processing to Metal'' alternative described in the IMNM EIS. DOE stated that this alternative was selected for reasons similar to those for the Mark-31 targets (a material very similar to the TRR spent nuclear fuel). That is, by processing the TRR spent fuel to a metal, the material could be stabilized earlier than under the other alternatives, and four to nine years earlier than the environmentally preferred alternative, i.e., Improving Storage. Further delay in removing the fuel from wet storage would serve no practical purpose. Other reasons for selecting Processing to Metal include the fact that the selected stabilization alternative relies on existing operating equipment and trained personnel, the technical uncertainty is low, costs are well established, and the small amount of plutonium metal produced would be a small fraction of the DOE inventory and would not present nuclear nonproliferation concerns. DOE believes that the reasons for choosing the Processing to Metal alternative for initial failed TRR fuel still apply to the remaining TRR spent nuclear fuel.

DOE therefore has concluded that all the TRR spent nuclear fuel in RBOF is ''at risk'' material. DOE bases its conclusion on the following:

- The poor TRR spent fuel use and storage conditions in Taiwan are known to have caused gross failure for other TRR fuel;
- The TRR fuel that DOE believed to be intact was exposed to the same poor conditions in Taiwan;
- Poor storage conditions facilitate the start of corrosion sites on the spent fuel cladding;
- The high quality of the RBOF storage basin water would not be sufficient to arrest existing fuel corrosion because uranium metal corrosion and existing corrosion sites established on aluminum would continue to progress even with excellent water quality;
- Hydrogen gas generation around TRR spent fuel, previously believed to be intact, indicates that fuel cladding has failed and that the uranium metal beneath the fuel cladding is corroding;
- Water monitoring data indicate that storing the TRR spent fuel in RBOF caused radioactivity releases into RBOF water to more than double; and
- The continued presence of fission products in the RBOF pool water indicates that fuel failure is continuing.

Corrosion of the TRR fuel creates radiation exposure, safety, waste and environmental concerns which dictate the expeditious resolution of the corrosion problem. Continued wet storage would facilitate the TRR fuel corrosion process. Other storage arrangements would be impractical because of the protracted implementation schedule. Therefore, DOE has decided to stabilize the TRR spent nuclear fuel in the 62 canisters by the IMNM EIS Processing to Metal alternative using the F-Canyon and FB-Line facilities at the SRS.

Issued at Washington, DC, April 2, 1997.

Alvin L. Alm,

Assistant Secretary for Environmental Management.

Supplement Analysis for Stabilization of TRR Fuel

Background

The U.S. Department of Energy (DOE) prepared a final environmental impact statement (EIS), ''Interim Management of Nuclear Materials'' (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their ultimate disposition are made and implemented. Some of the particular materials considered in the EIS could present environmental, safety and health vulnerabilities in their current storage condition.

On December 12, 1995, DOE issued a Record of Decision (ROD) and Notice of Preferred Alternatives, 60 FR 65300 (December 19, 1995), on the interim management of several categories of nuclear materials at the SRS, including Taiwan Research Reactor (TRR) spent nuclear fuel rods. DOE decided to stabilize 81 TRR spent fuel rods because the TRR fuel had failed,[2] presenting environmental, safety and health vulnerabilities that should be corrected. At the time of this decision, DOE stated that, if additional TRR spent fuel failed, DOE would categorize the failed fuel as Candidates for Stabilization and perform appropriate National Environmental Policy Act (NEPA) review and evaluation for stabilization of the material.

The IMNM EIS categorized 62 canisters of TRR spent nuclear fuel as suitable for interim storage, based on the absence of obvious gas generation or obvious damage to the fuel or the storage canisters. However, no evaluation was conducted of the integrity of the fuel rods within the canisters. Instead, DOE relied on the results of inspections completed prior to shipping the fuel to the United States for classifying the fuel as intact.

TRR fuel failure in Taiwan was the result of poor reactor operations or poor storage and handling conditions. For example, some TRR fuel was stored in outdoor dry storage consisting of a concrete pad into which carbon steel cylinders were vertically inserted below

[2] The term ''failed'' means that the cladding on the fuel has been breached. The ROD, 60 Fed. Reg. 65300 (December 19, 1995), stated that failed fuel is indicated by gas releases from a fuel storage canister or visible failure of the cladding or canisters.

grade. TRR spent fuel rods, held in metal baskets, were lowered into the cylinders. The cylinders were then capped and welded closed. Over time, water intruded into the cylinders and severely damaged some of the fuel. Failed cladding on TRR spent fuel was common, and some of the rods were so damaged that they had literally disintegrated into rubble.

Prior to loading all the TRR spent fuel for shipment to the United States, the Nuclear Assurance Corporation (NAC) evaluated the fuel to determine its integrity. NAC first visually inspected each rod to detect cladding failures on the rods which are approximately one inch in diameter and 10 feet long. NAC conducted its visual inspection from a safe distance of at least 10 feet, using magnification devices such as binoculars. Any failed fuel detected in this fashion was canned immediately.

If no obvious defects were discovered, NAC then subjected each rod to a ''sip'' test. For this test, a fuel rod was first placed in a container filled with water. A sample of the water in the container was drawn and analyzed to detect fission products such as cesium-137. After three or four hours, another sample was drawn and analyzed. If the difference between the two samples was greater than two times the background radiation level, NAC considered the rod to be failed. Any failed fuel detected in this fashion was canned, one failed fuel rod per canister.

Rods that passed the visual and ''sip'' inspections were placed in an aluminum ''overpack'' canister about 5 inches in diameter and 11 feet long. Five intact rods were placed in one canister. There were no baffles or separators installed to provide any cushion between the rods during shipment. The canisters were loaded in dry shipping casks for the 12,000 mile trip to the SRS. During shipment, the fuel rods were subjected to physical stress, such as impact between the rods in each canister,[3] due to transportation conditions. The TRR fuel was shipped to the United States during 1990 and 1991.

Upon receipt at the SRS, the transportation casks were placed underwater in RBOF. The canisters were unloaded from the transportation casks, and a visual inspection of the canisters' exterior was performed prior to placing the canisters in underwater storage in RBOF.

The results of the tests on TRR spent fuel integrity that were performed in Taiwan only provided an assessment of the TRR fuel rods at the time they were loaded into the canisters. The tests could not predict cladding performance after the canisters were loaded into the shipping casks, or after six to seven years of wet storage at the SRS, especially in light of the historically poor storage and handling conditions in Taiwan.

Current Conditions

The Westinghouse Savannah River Company (WSRC), DOE's management and operating contractor at the SRS, has observed occasional gas bubbles coming from the locations in RBOF where the TRR fuel previously believed to be intact is stored. Until recently, the source of the gas bubbles was not specifically identified because gas generation was sporadic. When the TRR fuel canisters were placed in storage in 1990 and 1991, DOE was planning to reprocess the TRR spent fuel, and therefore did not expect the fuel to remain in wet storage for a prolonged period. However, in 1992, the Secretary of Energy decided to phase out reprocessing activities, and consequently the TRR fuel has remained in wet storage much longer than anticipated.

In November 1996, WSRC noted a marked increase in the gas generation rate from two of the canisters containing TRR fuel that was previously thought to be intact. Gas bubbles that previously appeared on a sporadic basis appeared on a continuous basis at intervals ranging from about every 40 seconds to 1 minute. The likely reason for the increase in the generation of gas bubbles from the two TRR fuel canisters is that corrosion of either the fuel cladding or the uranium metal fuel is accelerating. DOE believes that corrosion sites on the TRR spent fuel occurred as a result of damage during handling, or poor storage conditions in Taiwan or in transit to the SRS. Pre-existing corrosion sites on the fuel cladding would have continued to progress after the material was placed in RBOF, because once a corrosion site had been formed, corrosion would continue despite the excellent water quality in RBOF.

Corrosion of uranium metal clad in aluminum was studied extensively for the Mark-31 targets that were stored in the L-Reactor Disassembly Basin.[4] These targets, which have recently been dissolved for stabilization, were very similar in nature to the TRR spent nuclear fuel in that both consisted of uranium-238 metal clad with aluminum. WSRC reported that the typical corrosion phenomenon occurred in two phases: an initiation stage, corresponding with the penetration of the fuel cladding either by corrosion or by storage and handling damage, followed by the beginning of uranium corrosion; and a propagation stage, corresponding with a significant growth of the corrosion's extent. The first stage was usually of unpredictable duration. During that stage, deformation of the cladding did not usually occur, but occasional bubbles of hydrogen could evolve. The reaction involved:

$$U+2H_2O \rightarrow UO_2+2H_2$$

The second phase, that is, the propagation phase, was characterized by growth of a blister at the location of cladding penetration. Once swelling started, the blister grew at a fairly steady rate until the accumulated uranium oxide caused the cladding to split. After the cladding split, the uranium oxide was released into the water, and a larger area of uranium metal was exposed to attack. In either phase, the progression of uranium metal corrosion would continue to occur regardless of the basin water quality. In sum, once the uranium metal is exposed to water, a more rapid reaction takes place liberating hydrogen, and once that corrosive process has started, there is no practical way to stop the process as long as the fuel is in contact with water.

The increase in the generation of gas bubbles from TRR fuel canisters is an indication that corrosion of the fuel is progressing from the initiation stage to the propagation stage. As this process continues, uranium oxide production will cause the cladding to split and expose more uranium metal to the basin water. As the corrosion products form, they will continue to carry radionuclides into the storage basin water. Canisters that display only occasional bubbles contain fuel that is earlier in the initiation stage of corrosion. In any case, the presence of hydrogen gas provides a strong indication that uranium metal corrosion has been initiated in the TRR fuel.

Another indication of corroding fuel is the release of fission products into the RBOF water. The basin filtration system removes fission products to maintain radioactivity levels in the water at acceptable limits, but this system must be turned off on a periodic basis for maintenance. During these periods, the rate of radioactivity release has been determined by establishing the rate of

[3] Spent fuel from foreign research reactors currently being returned to the United States is shipped in an entirely different manner that does not allow the fuel rods to come into direct contact with one another or contribute in any other way to their degradation.

[4] J.P. Howell, ''Corrosion Surveillance in Spent Fuel Storage Pools,'' NACE Corrosion/97 paper 107 (Houston, Texas: National Association of Corrosion Engineers, 1997).

change in the basin radioactivity levels. Currently, a steady increase in basin radioactivity levels always follows shutdown of the RBOF filtration system. This increase is due to the constant release of fission products by failed fuel in the basin. DOE believes that the source of this radioactivity is the TRR fuel, because the average RBOF water radioactivity levels more than doubled when the TRR spent fuel was placed in storage in the early 1990s.

Environmental Analysis

The CEQ regulations for implementing NEPA, 40 CFR 1502.9(c), direct federal agencies to prepare a supplement to an EIS when an agency ''makes substantial changes in the proposed action that are relevant to environmental concerns, or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.'' The DOE regulations for compliance with NEPA, 10 CFR 1021.314, direct that when it is unclear whether or not a supplemental EIS is required, the Department is to prepare a supplement analysis.

This Supplement Analysis (Analysis) evaluates new information regarding the condition of TRR spent fuel. In addition, this Analysis compares this new information with the IMNM EIS' evaluation of failed TRR spent fuel.

In the IMNM EIS, DOE evaluated the impacts of several stabilization alternatives (i.e., Processing to Metal, Processing to Oxide, Improving Storage, Processing and Storage for Vitrification in the Defense Waste Processing Facility, and Vitrification in F-Canyon) and a ''No Action'' alternative. For each alternative, the IMNM EIS estimated the potential impacts of stabilizing all of the TRR spent nuclear fuel (both failed fuel and that believed to be intact), including normal operations, waste generation, potential accidents, and cumulative impacts. In each case, the potential impacts for each stabilization alternative were estimated based on the entire SRS inventory of TRR spent fuel. As a result, the potential impact of stabilizing all the TRR spent fuel by Processing to Metal, as well as the potential impacts from the other alternatives, was analyzed and documented in the IMNM EIS.

Since discovering that additional TRR fuel has failed, DOE has re-evaluated the stabilization alternatives in the IMNM EIS to ensure that the analysis remains valid. In the IMNM EIS, DOE concluded that these alternatives would take from four to nine years to implement completely for the TRR spent nuclear fuel, while the preferred alternative of processing TRR spent fuel to a metal could be implemented more quickly. DOE believes that the estimates of time to implement TRR spent nuclear fuel stabilization alternatives in the IMNM EIS are still accurate. DOE expects that stabilization of the remaining TRR spent fuel in RBOF could be completed in 6 to 12 months.

Conclusion

Based on the foregoing, DOE finds that stabilizing the TRR fuel by the Processing to Metal alternative in the IMNM EIS will result in neither significantly greater environmental impacts than analyzed in the IMNM EIS nor a substantial change in the proposed action relevant to environmental concerns. Stabilizing all the TRR fuel by processing it to a metal is consistent with the goals of the proposed action in the IMNM EIS. Furthermore, stabilizing all the TRR fuel by processing it to a metal is consistent with the stabilization action selected in the December 12, 1995, ROD, which clearly allowed for the stabilization of additional TRR spent fuel. Consequently, DOE has concluded that the stabilization of the remaining TRR fuel does not require the preparation of a supplemental EIS.

[FR Doc. 97–9340 Filed 4–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Defense Programs; Inertial Fusion Science in Support of Stockpile Stewardship Grant Program

AGENCY: Department of Energy (DOE).

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy Office of Defense Programs hereby announces its interest in receiving grant applications for performance of unclassified innovative research in high energy-density science relevant to inertial fusion within the stockpile stewardship program.

The objectives of this new Inertial Fusion Science in Support of Stockpile Stewardship Financial Assistance Program are to (1) increase U.S. efforts in high-energy-density science relevant to Inertial Confinement Fusion (ICF) through funding of small research projects at universities and other private sector institutions; (2) promote interactions between such investigators and scientists at the Department of Energy weapons laboratories, and; (3) assist in training scientists in areas of long-term research relevant to stockpile stewardship.

Subject to the availability of appropriated funds, the Office of Inertial Fusion and the NIF Project intends to provide up to $2 million in FY98 for multiple grant awards under this Inertial Fusion Science in Support of Stockpile Stewardship Financial Assistance Program. Applicants will compete for one-to three-year grant awards through open competition with peer review.

The solicitation document invites applications from all segments of the U.S. private sector (non-federal). Any U.S. university or other institution of higher education or other non-profit or for-profit organization, non-federal agency or entity will be eligible for a grant award under this new financial assistance program. Non-U.S. citizens at U.S. institutions are eligible. Investigators at foreign institutions may not apply as a principal investigator, but may receive funding as a co-investigator. DOE must be notified of any foreign nationals involved in the funded work, and there may be some restrictions on their participation at certain facilities and conferences.

DATES: A solicitation will be available on or about April 11, 1997. Preapplications referencing DE-FG03–97DP00167, should be submitted by May 1, 1997. Full applications under this notice should be received by 4:30 pm Eastern Standard Time, June 30, 1997. Initial grant awards under this new financial assistance program are planned for about November 15, 1997.

ADDRESSES: The complete solicitation document will be available on or about April 11, 1997 on the Internet by accessing the ICF grant program home page (http://www3.dp.doe.gov/ifnif/grants.htm) or by accessing the DOE/OAK home page (http://www.oak.doe.gov/procure/proc__main.html). Prospective applicants may also submit a written request including a self-addressed stamped envelope and an MS-DOS formatted high density 3½'', virus free diskette to the contracting officer for a diskette copy of the solicitation (U.S. Dept. of Energy, Oakland Operations Office, 1301 Clay Street 700N, Oakland, CA 94612–5208, Attn: Bill O'Neal).

Completed applications referencing Solicitation Notice DE-PS03–97DP00167 must be submitted to: Office of Inertial Fusion, DP–18, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD, 20874–1290, Attn.: Grant Program.

FOR FURTHER INFORMATION CONTACT: Ann Satsangi, 301–903–8059, ann.satsangi@dp.doe.gov or Bill O'Neal 510–637–1880, bill.o'neal@oak.doe.gov

SUPPLEMENTARY INFORMATION:

Evaluation Process

Applications will undergo several stages of review: administrative review, stewardship/ICF review, and scientific/technical review. The administrative review assures that the application is complete, has been signed by an authorized official, and is consistent with national security and export laws. The stewardship relevance review will be performed by a panel consisting of representatives from the three weapons laboratories who will evaluate whether applications fall within the scope of the grant program. Independent scientific/technical peer reviewers will evaluate applications on their merit, will score them against an established set of criteria. The DOE selection official will be Christopher J. Keane, Associate Director, Office of Inertial Fusion and the NIF Project.

Scientific / Technical Merit Evaluation Criteria

The following evaluation criteria are listed in relative order of importance.

(1) Scientific/technical merit and significance of the research.

(2) The feasibility of plans for carrying out the proposed research considering such factors as appropriateness of the proposed method or approach, facility compatibility, other commitments, competition, and timing.

(3) Impact on stewardship mission.

(4) Adequacy of proposed resources and interest of the applicant institution.

(5) Research performance, capability and future promise of the investigator(s).

(6) Reasonableness and appropriateness of proposed budget.

Representative Research Areas

Under this solicitation, DOE will consider applications for unclassified research in inertial fusion science that is relevant to stockpile stewardship. Both theoretical and experimental proposals are encouraged. Examples of areas of research (and some subfields) eligible for support under this financial assistance program are:

Hydrodynamics—fluid instabilities, behavior of complex systems;

Radiative properties and atomic physics—dense plasma behavior, plasma spectroscopy, radiative transfer, opacity;

Plasma physics—interpenetrating plasmas, plasma streaming in magnetic fields, laser-plasma instabilities, beam-plasma interactions, high-energy-density plasmas;

Material properties—equation of state, extreme high temperature and high pressure regimes, material/radiation interactions;

Development of Diagnostics—particle (neutron and charged particle), spectroscopic (e.g. x-ray);

Computational Physics—radiation-hydrodynamics codes, material-radiation interactions new modeling techniques.

Facility Use

For applicants who propose the use of facilities at one of the ICF laboratories, arrangements will need to be made with the specific laboratory. Potential applicants should contact the appropriate laboratory directly to discuss any facility-related concerns and to determine the laboratory's procedures and schedule for submittal of a facility use proposal. The laboratory's review of facility use proposals for acceptability will take place prior to the DOE selection.

Preapplication

Potential applicants are encouraged to submit a preapplication consisting of one to five pages of narrative describing the research objectives and methods of accomplishment. The purpose of the preapplication is (1) to provide some feedback to applicants on the relevance of their ideas to the program, and (2) to give DOE an idea of the number of full applications to expect. A preapplication should include cover-page information and a brief (1 to 5 page) project description. The cover page should include: a statement that the document is a preapplication; principal investigator's (PI) name, telephone number, fax number, and e-mail address; name and address of PI's organization; and title of the project. The project description should include the following, as appropriate: a description of the proposed research; a statement of its importance; an explanation of methodology and equipment needs, including ICF facility use; anticipated results; a project schedule with estimated completion date; cost-share and total project cost information. Confidential or proprietary information is discouraged, but any such information must be clearly marked. Attachments or enclosures submitted with the preapplication will not be reviewed.

Preapplications will be reviewed relative to the goals of the grant program and the DOE will respond with a letter informing the applicant whether or not the proposed work is within the bounds of the program. Preapplications are not required, but are encouraged. Preapplications referencing DE–FG03–97DP00167, should be submitted by May 1, 1997 to: Office of Inertial, DP–18, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Attn.: Grant Program, or submitted electronically to: ann.satsangi@dp.doe.gov.

(The Catalogue of Federal Assistance number for this program is 81.112.)

Issued in Oakland, California, on April 2, 1997.

Anthony A. Pino,

Director, Program Acquisition and Assistance Division.

[FR Doc. 97–9339 Filed 4–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–323–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 7, 1997.

Take notice that on April 1, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in the above docket, a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (N.A.) (18 CFR 157.205, 157.212 and 157.216) and Columbia's authorization in Docket No. CP83–76–000, for authorization to relocate two existing points of delivery to New York State Electric & Gas (NYSEG) to a single location, to abandon by sale to NYSEG 18.2 miles of 6-inch and 8-inch pipeline and appurtenances located in Cattaraugus, Delaware and Tioga Counties, New York, and to abandon by retirement 0.6 mile of 6-inch and 8-inch pipeline located in Cattaraugus County, New York, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest

is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9317 Filed 4–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF94–147–002]

Grays Ferry Cogeneration Partnership; Notice of Amendment to Filing

April 7, 1997.

On April 2, 1997, Grays Ferry Cogeneration Partnership (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical operation of the cogeneration facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such motions or protests must be filed by April 17, 1997, and must be served on the Applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9321 Filed 4–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–19–011]

Northwest Regional Transmission Association; Notice of Filing

April 7, 1997.

Take notice that on March 14, 1997, Northwest Regional Transmission Association tendered for filing a Notice of Withdrawal of its Member Signature Pages for Public Utility District No. 1, of Franklin County, WA, and Public Utility District No. 1, of Benton County.

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 April 17, 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. 97–9318 Filed 4–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–003, ER96–1663–003, ER97–2358–000, ER97–2364–000, and ER97–2355–000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company; Notice of Filings

April 7, 1997.

Take notice that on March 31, 1997, Southern California Edison company (Edison), San Diego Gas and Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E), (collectively the Companies), and the Trustee for the California Independent System Operator Corporation (ISO Trustee), tendered several filings to implement the comprehensive restructuring of the California electric marketplace, and responding to the Commission's orders dated November 26 and December 18, 1996, in Docket Nos. EC96–19–000 and ER96–1663–000.[1]

Docket Nos. EC96–19–003 and ER96–1663–003

In Docket No. EC96–19–003 and ER96–1663–003, the ISO Trustee filed, among other things, the Independent System Operator's (ISO) organizational and governance documents, the ISO's Operating Agreement an Tariff, the Transmission Control Agreement and other materials and explanations required by the Commission as a condition to the transfer of operational control of transmission facilities in the State of California from the Companies to the ISO. The ISO Trustee's Power Exchange (PX) filign in this docket includes, among other things, the PX's organizational and governance documents, the PX's Operating Agreement and Tariff and other materials and explanations required by the Commission.

Also in Docket Nos. EC96–19–003 and ER96–1663–003, the Companies tendered for filing a Pro Forma Transmission Owner's Tariff. The Companies state that the Transmission Owner's Tariff, in conjunction with the tariff and agreements submitted by the ISO Trustee, contains the rate methodology, and certain terms and conditions related to transmission service provided over the Companies' facilities over which the ISO will have operational control. The Companies request that the Commission review the Pro Forma terms and conditions of the Transmission Owner's Tariff in this proceeding, and the utility-specific rates in the Companies' respective Section 205 tariff proceedings.

The Companies also submitted with the filing their joint response to certain questions raised by the Commission in its Phase I orders in this proceeding.

PG&E filed individually a Phase II market power filing and a response to the Commission regarding PG&E's proposed treatment of existing contracts. SDG&E filed individually a response to the Phase I orders consisting of a supplemental report concerning mitigation of market power and a description of how certain existing contracts will be administered after January 1, 1998. Edison filed

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[1] Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, 77 FERC ¶ 61,204 (1996); Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, 77 FERC ¶ 61,265 (1996) (Phase I Orders).

individually its market power mitigation strategies and a response to the Commission regarding Edison's proposed treatment of existing contracts.

Docket No. ER97–2355–000

In Docket No. ER97–2355–000, Edison filed a Transmission Owner Tariff and a Wholesale Distribution Access Tarriff. The Transmission Owner Tariff describes the rates, terms, and conditions of service to be provided through the California ISO over Edison's transmission facilities. The Wholesale Distribution Access Tariff describes the rates, tems, and conditions of service to be provided to wholesale customers over Edison's distribution facilities. Edison requests that its filing be made effective on the same date that the ISO and PX Tariffs are made effective.

Docket No. ER97–2358–000

In Docket No. ER97–2358–000, PG&E tendered for filing a proposed Transmission Owner Tariff, a Wholesale Distribution Tariff, and Cost Support for PG&E specific rates associated with the ISO. The Transmission Owner Tariff describes the rates, terms, and conditions of service to be provided through the California ISO over PG&E's transmission facilities. The Wholesale Distribution Access Tariff describes the rates, terms, and conditions of service to be provided to wholesale customers over PG&E's distribution facilities. PG&E requests that its filing be made effective at the same time the separately filed ISO and PX Tariffs are made effective.

Docket No. ER97–2364–000

In Docket No. ER97–2364–000, SDG&E tendered for filing a Transmission Owner Tariff, which revises the rates, terms, and conditions of service to be provided through the California ISO over SDG&E's transmission facilities. The proposed Transmission Owner's Tariff would supersede SDG&E's Open Access Tariff presently on file with the Commission. SDG&E requests that its filing be made effective at the same time the separately filed ISO and PX Tariffs are made effective.

Any person desiring to be heard or to protest said filings 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 6, 1997. In addition, parties submitting motions or protests must submit two copies of their filing on a computer diskette, one in WordPerfect 6.1 format, and one in a DOS file in the ASCII format (with 1″ margins and 10 characters per inch). The two computer files should be labeled (____.WP and ____.ASC) to avoid confusion. Filings must include a one page executive summary.

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 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. 97–9361 Filed 4–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2196–000]

Southern Company Services, Inc; Notice of Filing

April 7, 1997.

Take notice that on March 21, 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 for firm point-to-point transmission service between SCS, as agent for Southern Companies, and Federal Power Sales, Inc. and three (3) agreements for non-firm transmission service between SCS, as agent for Southern Companies, and (i) Central and Southwest Services, Inc., (ii) Central Louisiana Electric Company, Inc., and (iii) Southern Energy Trading and Marketing, Inc. under Part II of the Open Access Transmission Tariff of Southern Companies.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions and protests should be filed on or before April 17, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9319 Filed 4–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1786–000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

April 4, 1997.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. ER97–1786–000]

Take notice that on March 28, 1997, Public Service Company of Colorado tendered for filing an amendment in the above-referenced docket.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. UtiliCorp United Inc.

[Docket Nos. ER96–2756–000, ER96–2763–000, and ER96–2764–000]

Take notice that on March 18, 1997, UtiliCorp United Inc. tendered for filing a Notice of Withdrawal in the above-referenced dockets.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket Nos. ER96–3113–000 and OA97–88–000]

Take notice that on March 21, 1997, Commonwealth Edison Company tendered for filing an amendment in the above-referenced dockets.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket Nos. ER97–1127–000 and ER97–1143–000]

Take notice that on March 31, 1997, Western Resources, Inc. tendered for filing an amendment in the above-referenced dockets.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Colorado

[Docket No. ER97–1788–000]

Take notice that on March 28, 1997, Public Service Company of Colorado tendered for filing an amendment in the above-referenced docket.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER97–2201–000]

Take Notice that on March 21, 1997, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and AYP Energy, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to AYP Energy, Inc. under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and AYP Energy, Inc. request waiver of the Commission's sixty-day notice requirement to permit an effective date of March 15, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Company

[Docket No. ER97–2202–000]

Take Notice that on March 21, 1997, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and AYP Energy, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to AYP Energy, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission, and as amended in Docket No. OA96–47–000. Northern Indiana Public Service Company, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of February 21, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER97–2203–000]

Take Notice that on March 21, 1997, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and American Energy Solutions, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to American Energy Solutions, Inc. under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and American Energy Solutions, Inc. request waiver of the Commission's sixty-day notice requirement to permit an effective date of February 21, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER97–2204–000]

Take Notice that on March 21, 1997, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Atlantic City Electric Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Atlantic City Electric Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission, and as amended in Docket No. OA96–47–000. Northern Indiana Public Service Company, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of February 27, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER97–2206–000]

Take notice that on March 21, 1997, MidAmerican Energy Company (MidAmerican) filed with the Commission a Network Integration Transmission Service Agreement and a Network Operating Agreement, both dated March 1, 1997 and entered into by MidAmerican and the City of Geneseo, Illinois (Geneseo) in accordance with MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of March 1, 1997 for the Agreements and, accordingly, seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Geneseo, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER97–2207–000]

Take notice that on March 19, 1997, American Electric Power Service Corporation, (AEPSC) tendered for filing executed service agreements under the AEP Companies' Power Sales Tariffs. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service Agreement to be made effective for service billed on and after February 20, 1997.

A copy of the filing was served upon the parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas & Electric Company

[Docket No. ER97–2208–000]

Take notice that on March 21, 1997, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and PanEnergy Power Services under Rate GSS.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER97–2209–000]

Take notice that on March 21, 1997, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate GSS.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER97–2210–000]

Take notice that on March 21, 1997, Central Illinois Public Service Company (CIPS) submitted a service agreement, dated March 17, 1997, establishing CMS Marketing, Services and Trading (CMS) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of March 17, 1997, for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon CMS and the Illinois Commerce Commission.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2214–000]

Take notice that on March 24, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an amendment to Rate Schedule No. 85, an agreement with Baltimore Gas & Electric (BG&E) for the sale of energy and capacity.

Con Edison states that a copy of this filing has been served by mail upon BG&E.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2217–000]

Take notice that on March 24, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Atlantic Electric (Atlantic).

Con Edison states that a copy of this filing has been served by mail upon Atlantic.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2218–000]

Take notice that on March 24, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to CNG Power Services Corporation (CNG).

Con Edison states that a copy of this filing has been served by mail upon CNG.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Canal Electric Company

[Docket No. ER97–2219–000]

Take notice that on March 20, 1997, Canal Electric Company, in connection with Financial Accounting Standards No. 106, Postretirement Benefits Other than Pensions (PBOPs) on an accrual basis, tendered for filing the 1996 actuarial report and its impact on Rate Schedules 1, 2, 3, 4, 17 and 21 which are formula rate contracts. The 1996 figures indicate a reduction in postretirement costs of $19,665.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Cambridge Electric Light Company, Boston Edison Company

[Docket No. ER97–2220–000]

Take notice that on March 21, 1997, Cambridge Electric Light Company tendered for filing, pursuant to Commission Rule 602, a Settlement Agreement which would resolve a dispute between Boston Edison Company (BECo) and Cambridge Electric Light Company (Cambridge) relating to the rate applied for transmission services by BECo to Cambridge under the New England Power Pool Agreement that implicates the terms of their support agreement for Substation No. 509.

Comment date: April 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. UtiliCorp United Inc.

[Docket No. ES97–27–000]

Take notice that on March 26, 1997, UtiliCorp United Inc. filed an application, under § 204(a) of the Federal Power Act, seeking authorization to issue up to and including 5,000,000 shares of common stock, par value $1.00 per share, pursuant to a Dividend Reinvestment and Common Stock Purchase Plan; up to 2,500,000 shares of common stock, par value $1.00 per share, pursuant to the Applicant's Restated Savings Plan; up to and including 10,000,000 shares of common stock, par value $1.00 per share, in one or more public offerings; and up to $500 million of debt securities to be issued from time to time in one or more series. Applicant also requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: May 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Virginia Electric and Power Company

[Docket No. OA97–566–000]

Take notice that on March 21, 1997, Virginia Electric and Power Company (Virginia Power) tendered for filing amendments to the Interconnection Agreement between Virginia Electric and Power Company (Virginia Power or the Company) and the PJM Group (Virginia Power Rate Schedule FPC No. 73). The purpose of the filing is to unbundle the generation and transmission components of the Virginia Power economy sales under that Tariff. The amendments reflect the actions taken by Virginia Power beginning on January 1, 1997 to effectively unbundle its sales under that rate schedule. Virginia Power has requested an effective date of January 1, 1997 for the amendments.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission and the Manager of the PJM Interconnection.

Comment date: April 21, 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. 97–9360 Filed 4–10–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11553–000 Alaska]

Lace River Hydroelectric Project; Notice of Intent To Conduct Environmental Scoping Meetings and a Site Visit

April 7, 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. Lace River Hydro (LRH) intends to prepare an EA to file with the Commission for the proposed Lace River Hydroelectric Project. LRH will hold an environmental scoping meeting, pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of issues that should be analyzed in the EA.

Scoping Meeting

The time and location of the joint public and agency scoping meeting is:

Date: Thursday, May 1, 1997.

Place: Alaska Division of Governmental Coordination, Court Plaza Building, 240 Main Street, Suite 300, Juneau, Alaska.

Time: 12:00 p.m. (noon).

At the scoping meetings, LRH 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, LRH 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. Earle V. Ausman of LRH at (907) 258–2420, or can be obtained directly at either meeting.

Site Visit

LRH will also conduct a site visit to the proposed Lace River Project on Wednesday, April 30, 1997. Those attending must meet at the Echo Bay (at the end of the road) by 10 a.m. and promptly leave for the project site, via floatplane. Because of the remoteness, snowpack that time of the year, and difficulty of ground access at the proposed project site, a flyover would provide an efficient view of the site. Those attending the site visit should be physically fit, must wear warm clothing and hip waders, and may be asked to sign a waiver of liability regarding floatplane use.

To charter enough floatplanes in advance of the visit, LRH must identify the number of individuals interested in flying over the project site. Therefore, if you intend on visiting the proposed project site, you *must* first register with Mr. Earle V. Ausman of LRH at (907) 258–2420 no later than April 24, 1997. If inclement weather prevents a site visit on April 30th, the alternate site visit will be Friday, May 2nd 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.

The scoping meeting 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 meeting may instead submit written comments on the project. Written comments should be mailed to: Mr. Earle V. Ausman, Lace River Hydro, 1503 West 33rd Avenue, Suite 310, Anchorage, Alaska 99503. All correspondence should show the following caption on the first page: Scoping Comments, Lace River Hydroelectric Project, Project No. 11553–000, Alaska.

For further information, please contact Mr. Earle V. Ausman at (907) 258–2420 or Mr. Carl Keller of the Commission at (202) 219–2831.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9320 Filed 4–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–223–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Montgomery-Columbus Abandonment and Replacement Project and Request for Comments on Environmental Issues

April 7, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the abandonment of 87.4 miles of natural gas transmission pipeline and the construction and operation of 5.5 miles of natural gas transmission pipeline, proposed in the Montgomery-Columbus Abandonment and Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Southern Natural Gas Company (Southern) wants to abandon certain of its facilities in Alabama and replace a portion of its facilities that have deteriorated. The proposed abandonment and construction will not affect Southern's service obligations. Southern seeks authority to abandon in place:

- The 12-inch-diameter Montgomery-Columbus Mainline from milepost (MP) 79.709 to MP 143.289 in Dallas, Autauga, and Elmore Counties. This would include the removal of the East Flow Regulator/Meter Station at MP 81.401, and block valves, gate valves, and taps along the mainline;
- The 12-inch-diameter Montgomery-Columbus Loop between MP 81.209 and MP 100.729 in Dallas, Autauga, and Elmore Countries. Southern would also remove a tap and gate valves; and

[1] Southern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

• The 6-inch-diameter Selma Pipeline between MP 0.0 and MP 4.338 in Dallas County.

Southern seeks authority to construct and operate:

• About 4.04 miles of 30-inch-diameter loop pipeline from MP 261.00 to MP 265.04 along the South Main System in Macon County;

• About 1.5 miles of 30-inch-diameter loop pipeline along the South Main System from MP 183.657 and MP 185.167 in Dallas County.

• About 500 feet of 6-inch-diameter pipeline within the existing right-of-way to tie-in the Selma Tap and Selma Loop, and install a regulator at the Selma Tap at MP 83.420;

• Gas heaters at MPs 109.733, 116.919, 120.963, and 142.970 on the South Main System; and

• Appurtenant facilities, including connecting active taps presently tied into the pipelines being abandoned to its adjacent pipelines (to maintain service).

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information please write at the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require about 37.23 acres of land. Following construction, about 14.69 acres would be maintained as new right-of-way. The remaining 22.54 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of certain.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

• Geology and soils;

• Water resources, fisheries; and wetlands

• Vegetation and wildlife;

• Endangered and threatened species;

• Land use;

• Cultural resources;

• Air quality and noise;

• Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern.

• One residence is within 50 feet of the construction right-of-way at MP 263.469.

• Five perennial streams are crossed by the new facilities.

• About 19.8 acres of forest (9.2 acres of upland forest, 7.2 acres of pine plantation, and 3.4 acres of forested wetlands) would be cleared for construction of the new facilities.

• About 35.4 acres of wetlands would be disturbed. This preliminary list of issues may be changed based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

• Address your letter (and send two copies) to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Reference Docket No. CP97–223–000; and

• Mail your comments so that they will be received in Washington, DC on or before May 7, 1997.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9316 Filed 4–10–97; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5809–4]

Request for Comments: National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J; Agency Information Collection Activities up for Renewal (OMB Control Number: 2050–0141)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 10, 1997.

ADDRESSES: Oil Program Center, 401 M Street SW. (5203G), Washington, DC 20460. Materials relevant to this ICR may be inspected by visiting Public Docket No. NCP–J, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia. The docket is available for inspection between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. Appointments are necessary and can be made by calling (703) 603–9232. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Gail Thomas, (703) 603–8736. Facsimile number: (703) 603–9116. Electronic address: thomas.gail@epamail.epa.gov. Note that questions, but not comments, will be accepted electronically.

SUPPLEMENTARY INFORMATION:

Affected Entities

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) subpart J (40 CFR 300.900, ''Use of Dispersants and Other Chemicals'') includes criteria for listing oil spill mitigating products on the NCP Product Schedule. The Product Schedule is required by section 311(d)(2)(G) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (OPA), and identifies ''dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out'' the NCP. Under Subpart J, respondents wishing to add a product to the Schedule must submit technical product data specified in 40 CFR 300.915 to EPA's Oil Program Center. The specific private industry sectors subject to this action include but are not limited to: Manufacturers of dispersants, surface washing agents, surface collecting agents, bioremediation agents, and other chemical agents and biological additives used as countermeasures against oil spills. Affected private industries can be expected to fall within the following industrial classifications: Manufacturers of industrial inorganic chemicals (SIC 281), manufacturers of industrial organic chemicals (SIC 286), and manufacturers of miscellaneous chemical products (SIC 289).

Title

National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J, OMB Control Number: 2050–0141. EPA Control Number: 1664.02. Expiration Date: 8/31/97.

Abstract

The use of dispersants, other chemical agents, and bioremediation agents to respond to oil spills in U.S. waters is governed by subpart J of the NCP (40 CFR 300.900). EPA's regulation, which is codified at 40 CFR 300.00, requires that EPA prepare a schedule of ''dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP.'' Under subpart J, respondents wishing to add a product to the Product Schedule must submit technical product data specified in 40 CFR 300.915 to EPA. EPA places oil spill mitigating products on the Product Schedule if all the required data are submitted. The Product Schedule is available to Federal On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Committees for determining the most appropriate products to use in various spill scenarios. Subpart J ensures that OSCs, RRTs, and Area Committees have necessary data regarding the toxicity, effectiveness, and other characteristics of different products in order to make more informed decisions regarding the use of such products during time critical spill responses. Because local conditions may require additional information, RRTs may, under the revisions, require supplemental toxicity and effectiveness testing of products.

Section 300.920(c) allows respondents to assert that certain information in the technical product data submissions is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR part 2, subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and clearly marked ''Confidential Business Information.'' If the submitter fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

Products currently listed on the Product Schedule are divided into five basic categories: dispersants, surface washing agents, surface collecting agents, bioremediation agents, and miscellaneous oil spill control agents. Under subpart J, manufacturers who wish to list a product on the Schedule must report the items specified below for the appropriate category.

Dispersants

1. Name, brand, or trademark, if any, under which the dispersant is sold;
2. Name, address, and telephone number of the manufacturer, importer, or vendor;
3. Name, address, and telephone number of primary distributors or sales outlets;
4. Special handling information and worker precautions for storage and field application, including maximum and minimum storage temperatures;
5. Shelf life;
6. Recommended application procedures, concentrations, and conditions for use;
7. Results of the effectiveness test set forth in Appendix C of the NCP;
8. Results of the toxicity test set forth in Appendix C of the NCP;
9. Physical properties covered by the American Society for Testing and Material's reference standards;
10. Dispersing agent components;
11. The concentrations or upper limits of any heavy metals, cyanide, and chlorinated hydrocarbons; and
12. The identity of the laboratory that performed tests, the qualifications of the laboratory's staff, and laboratory experience with similar tests.

Under NCP subpart J, respondents must test some products for effectiveness and toxicity and provide the results to EPA's Oil Program Center. Dispersants are required to demonstrate a 45% (±5%) effectiveness level in order to be placed on the Schedule. Only those dispersants that meet or exceed the effectiveness acceptability threshold, and are therefore eligible to be listed on the Schedule, need be tested for toxicity.

Surface Washing Agents

1. Name, brand, or trademark, if any, under which the surface washing agent is sold;
2. Name, address, and telephone number of the manufacturer, importer, or vendor;
3. Name, address, and telephone number of primary distributors or sales outlets;
4. Special handling information and worker precautions for storage and field application, including maximum and minimum storage temperatures;
5. Shelf life;
6. Recommended application procedures, concentrations, and conditions for use;
7. Results of the toxicity test set forth in Appendix C of the NCP;

8. Physical properties covered by the American Society for Testing and Material's reference standards;
9. Surface washing agent components;
10. The concentrations or upper limits of any heavy metals, cyanide, and chlorinated hydrocarbons; and
11. The identity of the laboratory that performed tests, the qualifications of the laboratory's staff, and laboratory experience with similar tests.

Surface Collecting Agents

1. Name, brand, or trademark, if any, under which the surface collecting agent is sold;
2. Name, address, and telephone number of the manufacturer, importer, or vendor;
3. Name, address, and telephone number of primary distributors or sales outlets;
4. Special handling information and worker precautions for storage and field application, including maximum and minimum storage temperatures;
5. Shelf life;
6. Recommended application procedures, concentrations, and conditions for use;
7. Results of the toxicity test set forth in Appendix C of the NCP;
8. Physical properties covered by the American Society for Testing and Material's reference standards;
9. Test results distinguishing surface collecting agents from other chemical agents;
10. Surface collecting agent components;
11. The concentrations or upper limits of any heavy metals, cyanide, and chlorinated hydrocarbons; and
12. The identity of the laboratory that performed tests, the qualifications of the laboratory's staff, and laboratory experience with similar tests.

Bioremediation Agents

1. Name, brand, or trademark, if any, under which the bioremediation agent is sold;
2. Name, address, and telephone number of the manufacturer, importer, or vendor;
3. Name, address, and telephone number of primary distributors or sales outlets;
4. Special handling information and worker precautions for storage and field application, including maximum and minimum storage temperatures;
5. Shelf life;
6. Recommended application procedures, concentrations, and conditions for use;
7. Results of the effectiveness test set forth in Appendix C of the NCP;
8. For microbiological cultures, a listing of all microorganisms by species, including percentages, special nutrient requirements, etc.;
9. For enzyme additives, information on the enzyme, including source, operating conditions, shelf life, etc.;
10. The identity of the laboratory that performed tests, the qualifications of the laboratory's staff, and laboratory experience with similar tests.

Miscellaneous Oil Spill Control Agents

1. Name, brand, or trademark, if any, under which the miscellaneous oil spill control agent is sold;
2. Name, address, and telephone number of the manufacturer, importer, or vendor;
3. Name, address, and telephone number of primary distributors or sales outlets;
4. Special handling information and worker precautions for storage and field application, including maximum and minimum storage temperatures;
5. Shelf life;
6. Recommended application procedures, concentrations, and conditions for use;
7. Results of the toxicity test set forth in Appendix C of the NCP;
8. Physical properties covered by the American Society for Testing and Material's reference standards;
9. Miscellaneous oil spill control agent components;
10. The concentrations or upper limits of any heavy metals, cyanide, and chlorinated hydrocarbons;
11. Information on any microbiological cultures, enzyme additives, or nutrient additives; and
12. The identity of the laboratory that performed tests, the qualifications of the laboratory's staff, and laboratory experience with similar tests.

Respondents submit the required data to EPA in hard copy. If the data are approved by EPA, they are entered electronically on the Product Schedule. The data are then made available to OSCs through five media: (1) Hard copy; (2) computer disk; (3) electronic mail; (4) NOAA First Class; and (5) File Transfer Protocol. The five options ensure that OSCs can obtain the information as efficiently as possible and that the information is useful in practice.

Recordkeeping

No specific recordkeeping activities are required under Subpart J of the NCP.

Purpose of Data Collection

The Product Schedule is available for use by OSCs, Regional Response Teams (RRTs), and Area Committees in determining the most appropriate products to use in various spill scenarios. Under 40 CFR 300.910(a), RRTs and Area Committees are required to address the desirability of using the products on the Product Schedule in their Regional Contingency Plans (RCPs) and Area Contingency Plans (ACPs), respectively. The required information is needed from the respondent so that the OSCs, RRTs, and Area Committees can make informed decisions to safely employ chemical countermeasures to control oil discharges. Correct product use is critical in emergency situations. Subpart J ensures that OSCs, RRTs, and Area Committees have necessary data regarding the toxicity, effectiveness, and other characteristics of different products.

Burden Statement

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide the information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems to collect, validate, and verify information, process and maintain information, and disclose and provide information; adjust methods to comply with any new requirements and instructions; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This notice provides the Agency's estimate of burden to respondents to perform the required actions under 40 CFR 300.900. The burden is estimated in terms of the time spent by respondents to complete activities necessary to submit an application for listing a product on the Schedule, i.e., review instructions and guidance; search existing data sources; gather and maintain the data received (including conducting any tests that may be necessary); and complete, review, and submit the information.

The Agency developed the burden hours estimates for manufacturers of an oil spill mitigating product based on consultations with Federal OSCs, chemical countermeasure experts, such as Scientex Corporation personnel, technical experts, both international and domestic, such as personnel at the National Environmental Technology Applications Center, and various commercial laboratories. The Agency is soliciting public comment on the burden estimates contained in the notice.

Except for effectiveness and toxicity testing, the data items discussed previously should already be available

to respondents through customary business practices (i.e., normal research and development activities). Effectiveness and toxicity tests, where applicable, burden respondents with the additional task of sending the product to a laboratory for testing.

Processing, compiling, and reviewing the information required under subpart J requires the following respondent activities:

- Inserting simple information;
- Drafting short answers;
- Drafting narrative answers and preparing backup documentation;
- Secretarial/clerical support; and
- Managerial review.

Under subpart J, the respondent must also notify EPA of any changes in the composition, formulation, or application of the dispersant, surface washing agent, surface collecting agent, bioremediation agent, or miscellaneous oil spill control agent. If the change is likely to alter the effectiveness or toxicity of the product, EPA may require retesting. If EPA decides that retesting is necessary, the submitter must have the product tested in a laboratory and send a summary of the results along with the qualifications of the laboratory staff to EPA.

The burden to respondents is estimated in terms of the time (in hours) spent by respondent personnel to comply with the information collection activities. These burden estimates are based on the following set of time range assumptions:

- Insert simple information, 0.0–0.5 hours.
- Draft short answers, 0.5–1.0 hours.
- Draft narrative answers and prepare backup materials, 2.0–5.0 hours.
- Managerial review, One-fifth of the time required to complete the response items.
- Secretarial/clerical support, 5.0–10.0 hours (per response).

The time estimates include the time to complete each individual response item as required under NCP subpart J, as well as (depending on the type of information requested) time to: review instructions, search existing data sources, prepare backup documentation, and maintain/record the data.

Exhibit 1 shows the unit burden (in hours) for respondents under subpart J. Surface washing agents are placed with surface collecting and miscellaneous oil spill control agents in the exhibit because similar data items are required for each. As demonstrated in Exhibit 1, the unit burden ranges are: dispersants, 17–40 hours; surface collecting agents, 15.5–36 hours; surface washing agents, 15.5–36 hours; miscellaneous oil spill control agents, 15.5–36 hours; and bioremediation agents, 14–33 hours. Although sorbents are not included on the Product Schedule, sorbent manufacturers are required to certify the composition of their product. The written certification, which will certify that a sorbent meets the definition in subpart J, may be requested by OSCs when determining whether to use a sorbent.[1] The estimated unit burden for sorbent certification is 2.0–3.5 hours. Because sorbents are not listed on the Product Schedule, the small burden of sorbent certification is not shown in the exhibit.

EXHIBIT 1.—RESPONDENT BURDEN FOR THE DATA ITEMS REQUIRED UNDER NCP SUBPART J

Response form items	Respondent activities	Dispersants	Burden (hours)	
			Surface washing agents, surface collecting agents, and miscellaneous oil spill control agents	Bioremediation agents
Product, manufacturer, and distributor information	Simple information	0—0.5	0—0.5	0—0.5
Special handling information and precautions	Short answer	0.5—1	0.5—1	0.5—1
Shelf life information	Simple information	0—0.5	0—0.5	0—0.5
Recommended application procedures	Short answer	0.5—1	0.5—1	0.5—1
Toxicity testing information	Narrative answer	2.0—5.0	2.0—5.0	N/A
Effectiveness testing information	Narrative answer	2.0—5.0	N/A	2.0—5.0
List of ASTM physical properties	Short answer	0.5—1	0.5—1	N/A
Test results for distinguishing surface collecting agents from other chemical agents.	Short answer	N/A	0.5—1	N/A
List of product components	Narrative answer	2.0—5.0	2.0—5.0	N/A
Analysis results for heavy metals, cyanide, and chlorinated hydrocarbons.	Short answer	0.5—1	0.5—1	N/A
Identity of laboratory performing tests	Narrative answer	2.0—5.0	2.0—5.0	2.0—5.0
Information on microbiological cultures, enzyme additives, and nutrient additives.	Narrative answer	N/A	N/A	2.0—5.0
Description of how the product works and its uses	Short answer	N/A	0.5—1	N/A
	Managerial Review	2.0—5.0	1.5—4.0	2.0—5.0
	Secretarial/Clerical Support.	5.0—10.0	5.0—10.0	5.0—10.0
Unit Burden		17.0—40.0	15.5—36.0	14.0—33.0
Frequency of response		(1)	(2)	(2)
Annual Burden		57	155	141

N/A—No response required for this item.
[1] 2/year.
[2] 6/year.

Unit cost (cost per individual response) is based on two components: labor cost and laboratory cost. Labor cost results from the amount of time spent by industry personnel supplying the required data. The cost for labor is derived by multiplying the unit burden hours presented in Exhibit 1 by the wage rate for industry personnel. The

[1] The following model certification statement suffices: ''[SORBENT NAME] is a sorbent material and consists solely of the materials listed in § 300.915(g)(1) of the NCP.''

hourly rates, in 1996 dollars, are $38.01 for Management, $28.74 for Technical, and $17.19 for Clerical.

These wage rates reflect private industry averages, which were estimated by the Bureau of Labor Statistics (BLS) based on a survey of 22,000 occupations within 4,200 establishments in the private sector. These rates include direct salary and fringe benefits. In addition, these BSL rates were adjusted to include overhead costs through a 17 percent multiplier.[2]

The wage rate used in this analysis is a weighted hourly rate that reflects the assumption that the total number of work hours necessary for completing an application form is divided among three labor categories in the following way: 20% for managerial staff to direct and review activities; 70% for technical staff to conducting the majority of the information collection activities; and the remaining 10% for clerical support. Based on the above assumptions, the weighted hourly wage rate developed for this FR is (.20)($38.01)+(.70)($28.74)+(.10)($17.19) =$29.43 per hour.

Laboratory costs are incurred when a respondent must test its product for effectiveness and/or toxicity according to the methods outlined in Appendix C of the NCP. In order to provide the necessary information, respondents need to have their product tested at a laboratory. The costs for toxicity tests for dispersants, surface collecting agents, surface washing agents, and miscellaneous oil spill control agents are estimated to cost $5,000 each. Dispersant effectiveness testing will cost an estimated $500 each using the swirling flask method. A dispersant must exceed the 45% (±5%) threshold in order to be listed on the Schedule. The protocol for effectiveness testing of bioremediation agents under subpart J is estimated to cost $8,000.[3]

The unit costs for each respondent to comply with the information collection requirements are presented in Exhibit 2 for subpart J. The unit costs are presented as ranges, reflecting the ranges of burden estimates. The unit cost is the sum of the labor cost and the laboratory cost.

The unit costs under subpart J are: Dispersants, $6,000—$6,677; surface washing agents, $5,456—$6,059; surface collecting agents, $5,456—$6,059; miscellaneous oil spill control agents, $5,456—$6,059; and bioremediation agents, $8,412—$8,971. Certification of sorbent materials costs the average respondent (2.75 hours/certification × $29.43/hour =) $80.93. Because sorbents are not listed on the Product Schedule, the small cost of sorbent certification is not shown in the exhibit.

The number of responses expected annually over the three-year ICR approval period has been estimated based on the average rate of applications for listing on the Schedule over the last three years. It is estimated that responses would be submitted for 6 bioremediation agents, 3 surface washing agents, 0 surface collecting agents, 3 miscellaneous oil spill control agents, and 2 dispersants each year of the ICR period; consequently, EPA estimates that, on average 14 total product listings will occur each year of the ICR period.

The annual burdens (i.e., the burdens to all respondents within a product category) are presented at the bottom of Exhibit 1. The annual burden is arrived at by multiplying the average unit burden (the midpoint of the range) by the estimated frequency of responses per year.

Based on the annual burdens shown in Exhibit 1, the total annual burden under subpart J will be (57+155+141=) 353 hours for all 14 respondents. However, it is also expected that 6 sorbent manufacturers per year will have to certify the composition of their product, at an annual burden of (6 products × 2.75 hours/product =) 16.5 hours. Therefore, the total annual burden to manufacturers under subpart J will be 340 hours.

The annual costs for the product categories are presented at the bottom of the tables in Exhibit 2. These are calculated by multiplying the unit cost for listing a product under each category by the number of products expected to be listed in each category on an annual basis.

It is also expected that 6 sorbent manufacturers per year will have to certify the composition of their product, at an annual cost of ($80.93/response × 6 responses =) $485.58. The total annual cost to manufacturers under subpart J will, therefore, be $99,710.

EXHIBIT 2.—RESPONDENT COST FOR ACTIVITIES REQUIRED UNDER NCP SUBPART J

NCP Subpart J	Dispersants	Surface washing agents, surface collecting agents, and miscellaneous oil spill control agents	Bioremediation agents
Labor Cost:			
(# of hours × $29.43/hour)	$500–$1,177	$456–$1,059	$412–$971
Laboratory Cost:			
—Effectiveness	500	N/A	8,000
—Toxicity	5,000	5,000	N/A
Unit Cost	6,000–6,677	5,456–6,059	8,412–8,971
Frequency of response	(1)	(2)	(2)
Annual Cost	12,677	34,545	52,149

N/A—No response required for this item.
[1] 2 per year.
[2] 6 per year.

With respect to Agency burden under subpart J, EPA will perform the following activities when a manufacturer applies to have a product listed on the Product Schedule, when a product already on the Schedule is

[2] The overhead multiplier was computed based on the average state benefit load reported in Employer Costs for Employee Compensation, March 1995.

[3] Estimates from National Environmental Technology Applications Center.

changed in composition, formulation, or application:

—Receive and process the data;

—Review the data for completeness and procedural accuracy;

—Notify the respondent of the decision on listing the product on the Schedule; and

—If approved, place the product on the Schedule, store the data, and supply the data upon request.

EPA's decision to place a product on the Schedule is based solely on the completeness of the information presented and whether required effectiveness thresholds are met.

Exhibit 3 provides estimates of the unit burden and unit cost to EPA for processing information on products to be listed. Burden estimates are based on EPA's experience with placing products on the Schedule under subpart J. Under subpart J, EPA's burden is 12 hours per listing application for all product categories.

EXHIBIT 3.—EPA BURDEN TO IMPLEMENT NCP SUBPART J

NCP subpart J	Burden (hours)		
	Dispersants	Surface washing agents, surface collecting agents, and miscellaneous oil spill control agents	Bioremediation agents
Process submitted data	5.0	5.0	5.0
Review data for approval	4.0	4.0	4.0
Notify respondent of decision	2.0	2.0	2.0
Store data	1.0	1.0	1.0
Unit Burden	12.0	12.0	12.0
Frequency of response	(1)	(2)	(2)
Annual Burden	24	72	72

[1] 2 per year.
[2] 6 per year.

The unit costs to EPA for processing each type of application are presented in Exhibit 4 for subpart J. Labor rates for government workers reflect the median GS level salaries for managerial and technical positions at EPA, based on the Office of Personnel Management's January 1997 general schedule salary table. The hourly rate are: $44.46 for management (GS–13) and $31.20 for technical (GS–11). These rates include both direct salary and personnel benefits (medical insurance, income protection, etc.; estimated at 60% of direct salary).[4] For purposes of this information collection, a weighted government wage is used that assumes an equal amount of managerial (GS–13) and technical (GS–11) time for processing and reviewing applications. This weighted government wage rate is (.50)($44.46)+(.50)($31.20)=$37.83 per hour. This wage rate is multiplied by the hours in Exhibit 3 to obtain the cost to EPA for labor. The cost for labor per application is ($37.83/hour × 12 hours =) $454 for all applications.

For dispersants under subpart J, § 300.920 (a)(2) gives EPA the right to verify test results and consider the results of EPA's verification testing in determining whether the dispersant meets the listing criteria. For purposes of this analysis, EPA estimates that 10 percent of all submitted dispersant applications will undergo verification tests at a cost of $500 per test. Thus, on average, EPA estimates that verification testing will cost approximately $50 per dispersant submission. This results in a total unit cost of $504 per dispersant application under subpart J. There are no costs in addition to labor costs for other types of products under subpart J.

The annual burdens and costs to EPA under subpart J are presented at the bottom of the tables in Exhibits 3 and 4, respectively. The annual burden depends on the frequency of applications. As mentioned previously, it is estimated that, under subpart J, applications would be received for 6 bioremediation agents, 3 surface washing agents, 3 miscellaneous oil spill control agents, and 2 dispersants.

The annual agency burden is determined by multiplying the unit agency burden by the frequency of applications. For example, it is estimated that the average request to list a dispersant would require 12 hours of EPA staff time under subpart J (as shown in Exhibit 3). It is also estimated that EPA would process two applications for dispersants each year, as mentioned above. The annual burden to EPA for dispersants under subpart J would, therefore, be (12 hours/application × 2 applications) = 24 hours. The total annual burden will be (24+72+72) = 168 hours.

The annual cost to EPA is calculated by multiplying the unit costs presented in Exhibit 4 by the frequencies of application. For example, under subpart J, the annual cost to EPA for dispersants would be ($554/application × 2 applications =) $1,108. The total annual cost will be ($1,108+$2,724+$2,724 =) $6,556.

[4] U.S. Environmental Protection Agency, ICR Handbook, June 1992, p. 30.

EXHIBIT 4.—EPA COST TO IMPLEMENT NCP SUBPART J

NCP subpart J	Dispersants	Surface washing agents, surface collecting agents, and miscellaneous oil spill control agents	Bioremediation agents
Labor Cost:			
(# of hours × $37.83/hour)	$454	$454	$454
Laboratory Cost:			
—Effectiveness	[1] 100	N/A	N/A
—Toxicity	N/A	N/A	N/A
Unit cost	554	454	454
Frequency of response	([2])	([3])	([3])
Annual Cost	1,108	2,724	2,724

[1] EPA assumes that it will on average verify 2 out of every 10 dispersants at $500 per test.
N/A—No response required for this item.
[2] 2 per year.
[3] 6 per year.

As part of the Agency's efforts to reduce the overall paperwork burden on regulated facilities, EPA would like to solicit comments on how the Agency could best reduce the total paperwork burden hours for this rule while maintaining an effective level of environmental protection. EPA also would like to solicit public comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR Part 9. Send comments regarding these matters, or any other aspects of the information collection, including suggestions for reducing the burden, to the address listed above under **ADDRESSES** near the top of this Notice.

Dated: April 3, 1997.

Elaine Davies,

Deputy Director, Office of Emergency and Remedial Response.

[FR Doc. 97–9379 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5810–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Collection of Compliance Information From Automotive Service and Repair Shops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Collection of Compliance Information from Automotive Service and Repair Shops. This information request has no prior OMB number. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 12, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1793.01.

SUPPLEMENTARY INFORMATION:

Title: Collection of Compliance Information from Automotive Service and Repair Shops, no prior OMB Control No., EPA ICR No. 1793.01. This is a new request to collect information.

Abstract: The Office of Compliance within the Office of Enforcement and Compliance Assurance is conducting a statistical survey using a consolidated screening checklist to determine the level of compliance within the automotive service and repair industry. The information being obtained in the first survey will provide the Agency with a baseline of compliance that can be associated with this industry. The second survey, to be conducted twenty-four months later, is to determine if the level of compliance has improved and whether any compliance activities undertaken by the Agency can be attributed to that improvement. The information being collected is on a voluntary basis from the industry.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 11, 1996 (61 FR 55293); Three letters of comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize

technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 500 per survey.

Estimated Number of Respondents: 500 per survey.

Frequency of Response: Twice in three years.

Estimated Total Annual Hour Burden: 1,500 hours.

Estimated Total Annualized Cost Burden: $30,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1793.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: April 7, 1997.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 97–9380 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5810–3]

Agency Information Collection Activities Under OMB Review; New Source Performance Standards for the Surface Coating of Plastic Parts for Business Machines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR): has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for Surface Coating of Plastic Parts for Business Machines (NSPS Subpart TTT), OMB Control Number 2060–0162, expiration date: 4/30/97. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 12, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1093.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for the Surface Coating of Plastic Parts for Business Machines (OMB Control No. 2060–0162; EPA ICR No. 1093.05), expiring 4/30/97. This is a request for an extension of a currently approved ICR.

Abstract: Industrial surface coating operations emit volatile organic compounds (VOCs) in quantities that the Administrator believes cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Consequently, New Source Performance Standards for the surface coating of plastic parts for business machines were promulgated. VOC emissions from these facilities are the result of operation of the spray booths that apply prime coats, color coats, texture coats or touch-up coats. The standards ensure that owners or operators of these facilities use coatings that contain a low proportion of VOCs, and coating application equipment that provides a high transfer efficiency. In addition, or as an alternative, sources may use control equipment to meet the emission limits. In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 30, 1996 (61 FR 45959). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

- Respondents/Affected Entities: Industrial surface coating companies that process plastic parts used in the manufacture of business machines.

Estimated Number of Respondents: 41.

Frequency of Response: Initial, Quarterly, Semi-Annually.

Average Hours per Response: 6 hours.

Estimated Total Annual Hour Burden: 3639 hours.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1093.05 and OMB Control No. 2060–0162 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: April 7, 1997.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 97–9381 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5810–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards for Reformulated Gasoline; OMB No. 2060–0277; expires 05/31/97. The ICR describes the nature of the information collection and its expected burden and cost; and where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 12, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1591.07.

SUPPLEMENTARY INFORMATION:

Title: Standards for Reformulated Gasoline, (OMB Control No. 2060–0277; EPA ICR No. 1591.07, expiring 5/31/97. This is a request for an extension (with revisions to burden estimates) of a currently approved collection.

Abstract: Section 211(k) of the Clean Air Act requires EPA to regulate reformulated gasoline (RFG) and conventional gasoline. The Act requires schemes for monitoring and enforcing compliance and for tracking and trading credits and allows for averaging certain gasoline parameters for compliance. In order to enforce the requirements of the Act, EPA regulations (in effect since January 1, 1995) require recordkeeping, reporting and testing. In the negotiated regulation process, EPA agreed to further averaging of compliance in addition to what the Act requires. EPA also allowed refiners and importers further flexibility in how they can comply. All responses are mandatory except for certain voluntary quality assurance testing by refiners, importers, and distributors. EPA has authority to require this information under section 211 of the Act, 42 U.S.C. § 7545, section 114 of the Act, 42 U.S.C. § 7414 and section 208 of the Act, 42 U.S.C. § 7542.

The only parties with reporting requirements are refiners, importers and oxygenate blenders (and their independent labs); Distributors are subject to minimal recordkeeping requirements and voluntary (affirmative defense) quality assurance testing provisions. Retailers and wholesale purchaser-consumers in RFG areas only are required to accept and maintain transfer documents. Confidentiality of information reported or obtained from parties is protected under 40 C.F.R. Part 2.

The recordkeeping and reporting enables EPA to enforce the RFG and conventional gasoline requirements. The requirements also are necessary to enable each party receiving product to know what the product is and to ensure that party's ability to comply.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/20/96 (61 FR 67328); 5 comments were received and the ICR supporting statement summarizes the comments and EPA's actions taken in response to those comments.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 434 hours per year for refiners/importers of RFG; 65 hours per year for refiners/importers of conventional gasoline; 21 hours per year for RFG terminals and oxygenate blenders; and 1 hour per year for RFG truck distributors. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Refiners, importers, distributors, retailers and wholesale purchaser-consumers of reformulated gasoline; refiners, importers and distributors of conventional gasoline.

Estimated Number of Respondents: 75,000 RFG retailers and wholesale purchaser-consumers (with no measurable burden); 250 refiners and importers of gasoline, 150 of which are affected by the RFG rule and 230 of which are affected by the anti-dump portion of the rule; 8,000 distributors and 1,200 terminals.

Frequency of Response: RFG refiners: 4 quarterly and 1 annual; Conventional gasoline refiners: 2 annual; RFG Oxygenate blenders: 2 annual. Recordkeeping is ''on occasion.''

Estimated Total Annual Hour Burden: 87,767 hours.

Estimated Total Annualized Cost Burden: $17,971,950.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1591.07 and OMB Control No. 2060–0277 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137) 401 M Street, SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: April 7, 1997.

Richard T. Westland,

Acting Director, Regulatory Information Division

[FR Doc. 97–9383 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5810–5]

Draft Guidance for State Source Water Assessment and Protection Programs; Notice of Availability and Request for Comments

ACTION: Notice of availability for comment.

SUMMARY: The Environmental Protection Agency (EPA) is seeking public comment on draft guidance for the development and implementation of State Source Water Assessment and Protection Programs including Petition Programs. The State Source Water Assessment Program (SWAP) and the State Source Water Petition Program (SWPP) were established by the

reauthorized Safe Drinking Water Act (SDWA), signed by President Clinton on August 6, 1996. The term ''source water'' denotes any ground or surface water supply source destined for use as public drinking water. The SWAP is required of all States with primacy responsibility for administering drinking water programs, and consists of delineating drinking water source protection areas and conducting contaminant source inventories and susceptibility analyses within those delineated areas. The SWPP is voluntary for States, and consists of developing incentive-based voluntary management measures to reduce or eliminate threats to drinking water sources within assessed drinking water source protection areas. The SDWA requires EPA to publish final guidance for both SWAPs and SWPPs by August 6, 1997. The draft guidance announced in this notice has been developed by EPA so that the public may have the opportunity to review and comment on its contents before final guidance is issued. EPA is seeking comment on all aspects of the guidance.

DATES: EPA will accept public comment on this guidance until Friday, June 13, 1997.

ADDRESSES: Copies of the Draft Guidance for State Source Water Assessment and Protection Programs including Petition Programs are available from the Safe Drinking Water Act Hotline, telephone (800) 426–4791. Copies are also available from the Office of Water Resource Center (RC4100), U.S. EPA, 401 M Street, SW, Washington, DC 20460. The Center is open from 8:30 a.m. until 5:00 p.m. Monday through Friday. The guidance will be made available on EPA's Web Site at the following address: ''www.epa.gov\OGWDW''. Send written comments on the guidance to the SWAP and SWPP Comment Clerk; Water Docket MC–4101; Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Commenters are requested to submit any reference cited in their comments. Commenters are also requested to submit an original and 3 copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by June 13, 1997. No facsimiles (faxes) will be accepted.

Dated: March 25, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–9385 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5479–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed March 31, 1997 Through April 4, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970119, Draft Supplement EIS, AFS, ID, Katka Peak Timber Sale and Road Construction, Implementation, New Information from Interior Columbia Basin Ecosystem Management Project, to implement Ecosystem Restoration Treatment, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Boundary County, ID, Due: May 12, 1997, Contact: Barry Wynsma (208) 267–5561.

EIS No. 970120, Draft EIS, AFS, OR, Little River (DEMO) Demonstration of Ecosystem Management Options Timber Sale, Implementation, Umpqua National Forest, North Umpqua Ranger District, Douglas County, OR, Due: May 27, 1997, Contact: Debbie Anderson (541) 496–3532.

EIS No. 970121, Draft EIS, AFS, ID, Deadwood Ecosystem Analysis '96 Project, Implementation, Boise National Forest, Lowman Ranger District, Boise and Valley Counties, ID, Due: May 27, 1997, Contact: David D. Rittenhouse (208) 364–4100.

EIS No. 970122, Final EIS, NOA, OH, Ohio Combined Coastal Management Program, Implementation, Special Management Areas (SMAs), Lake Erie, OH, Due: May 12, 1997, Contact: Diana Olinger (301) 713–3113.

EIS No. 970123, Final EIS, AFS, CA, Jaybird Multi-Resource Project, Implementation, Downieville Ranger District, Yuba County, CA, Due: May 12, 1997, Contact: Gary Fildes (916) 288–3231.

EIS No. 970124, Legislative Draft EIS, AFS, CO, North Fork of the South Platte and the South Platte Rivers, Wild and Scenic River Study, To Determine their Suitability for Inclusion into the National Wild and Scenic Rivers System, Pike and San Isabel National Forests, Comache and Cimarron National Grasslands, Douglas, Jefferson, Park and Teller Counties, CO, Due: July 10, 1997, Contact: Lance Tyler (719) 585–3720.

EIS No. 970125, Draft EIS, FHW, MD, InterCounty Connector (ICC) Transportation Improvements, between I–270 Corridor near Rockville/Gaithersburg, Montgomery County and I–95 Corridor near Laurel in Prince George's County, Funding, COE Section 404 Permit and Right-of-Way Permit, Montgomery and Prince George's County, MD, Due: June 23, 1997, Contact: Renee Sigel (410) 962–4440.

EIS No. 970126, Final Supplement EIS, FHW, VT, Burlington Southern Connector, I–189 to Battery Street, Additional Information, Funding, Burlington , Chittenden, County, VT, Due: May 12, 1997, Contact: Frederick Downs (802) 828–4423.

EIS No. 970127, Draft EIS, COE, CA, Seven Oaks Dam Water Conservation Feasibility Study, Establishing a Seasonal Water Conservation and Supply Pool, Flood Control and Flood Protection, Santa Ana River Basin, San Bernardino County, CA, Due: May 27, 1997, Contact: William O. Butler (213) 452–3845.

EIS No. 970128, Draft EIS, BLM, AZ, Cyprus Miami Mining Leach Facility Expansion Project, Construction and Operation, Plan of Operations Approval and COE Section 404 Permit, Gila County, AZ, Due: June 10, 1997, Contact: Shela McFarlin (602) 417–9568. The US Department of the Interior and the US Department of Agriculture are Joint Lead Agencies on the above project.

EIS No. 970129, Final EIS, COE, NY, NJ, Newark Bay Confined Disposal Facility (NBCDF), Construction, Dredged Material Disposal Site, NY and NJ, Due: May 12, 1997, Contact: Marc Helman (212) 264–3912.

EIS No. 970130, Draft Supplement EIS, NAS, Cassini Spacecraft Exploration Mission to Explore the Planet Saturn and its Moons, Implementation, Due: May 27, 1997, Contact: Mark R. Dahl (202) 358–1544.

EIS No. 970131, Draft Supplement EIS, COE, PA, Lower Monongahela River Navigation System, Locks and Dam Nos. 2, 3, and 4 Improvements, Updated Information for Disposal of Dredge and Excavated Material, Funding, Allegheny, Washington and Westmoreland Counties, PA, Due: May 27, 1997, Contact: James A. Purdy (412) 644–6844.

Amended Notices

EIS No. 970084, Draft EIS, COE, CA, Morrison Creek Mining Reach Downstream (South) of Jackson Highway, Mining and Reclamation Project, COE Section 404 Permit Issuance, Sacramento County, CA, Due: May 05, 1997, Contact: Larry Vinzant (916) 557–5263. Published FR 03–21–97 Correction to Telephone Number.

EIS No. 970101, Draft EIS, UAF, CA, Programmatic EIS—McClellan Air Force Base (AFB) Disposal and Reuse Including Rezoning of the Main Base, Implementation, Federal Permits, Licenses or Entitlements, Sacramento County, CA, Due: May 12, 1997, Contact: Rick Solander (916) 643–0830 (Ext. 126). Published FR–03–28–97—Correction to Telephone Number.

EIS No. 970116, Final EIS, USA, MO, US Army Chemical School and US Army Military Police School Relocation to Fort Leonard Wood (FWL) from Fort McClellan, Alabama, Implementation, Cities of St. Robert, Waynesville, Richland, Dixon, Crocker, Rolla, Houston and Lebanon; Pulaski, Texas, Phelps and Laclede Counties, MO, Due: May 05, 1997, Contact: Alan Gehrt (816) 983–3142. Published FR–04–04–97—Correction to Telephone Number.

Dated: April 8, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–9419 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5479–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 24, 1997 Through March 28, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–COE–D35058–MD Rating EC2, Baltimore Harbor Anchorages and Channels Feasibility Study, Maritime Improvements, Port of Baltimore, Baltimore City, Baltimore County, and Anne Arundel County, MD.

Summary: EPA's environmental concerns are related to environmental and health impacts related to possible groundwater contamination, impacts to wetlands and the lack of information regarding monitoring plans during and after dredge.

ERP No. D–NPS–L61210–00 Rating LO, Klondike Gold Rush National Historical Park, General Management Plan (GMP), Implementation, Skagway, Alaska and Seattle, WA.

Summary: EPA's abbreviated review has revealed no concerns on this project.

ERP No. D–USN–K11077–CA Rating EC2, Novato, California Department of Defense Housing Facility Disposal and Reuse, Implementation, City of Novato, Marin County, CA.

Summary: EPA expressed environmental concerns and requested additional information regarding project description, cumulative impacts, water and wetlands, air quality and cultural resources protection.

Final EISs

ERP No. F–AFS–L65260–WA Taneum/Peaches Road Access Project, Issuance of Two Temporary Permits to Plum Creek for Road Construction, Wenatchee National Forest, Cle Elum Ranger District, Kittitas County, WA.

Summary: Based on EPA's review of the final EIS, EPA has determined that the proposed project is in conformance with the above statutes and regulations. However, EPA strongly suggests that the Forest Service and Plum Creek develop a long-term, comprehensive solution to address future road access issues.

ERP No. F–AFS–L67034–WA Crown Jewel Mine and Mill Project, Construction and Operation, Gold and Silver Mining and Milling Project, Plan of Operations Approval, Special-Use-Permits and COE Section 404 Permit, Chesaw, Okanogan County, WA.

Summary: EPA continued to have environmental concerns regarding water quality impacts, alternative selection and mitigation.

ERP No. F–DOE–L09809–WA Hanford Site Tank Waste Remediation Systems (TWRS), Management and Disposal of Radioactive, Hazardous, and Mixed Wastes, NPDES Permit and Approval of Several Permits, in the City of Richland, Grant County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11074–CA Las Pulgas and San Mateo Basin, Cease and Desist Order, Sewage Effluent Compliance Project, NPDES Permit, Marine Corps Base, Camp Pendleton, San Diego County, CA.

Summary: EPA had no objection to the proposed action. EPA found that, in general, the Navy responded to EPA concerns in the final EIS.

Dated: April 8, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–9420 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5809–2]

National Drinking Water Advisory Council; Notice Of Open Meetings

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S. C. S300f *et seq.*), will be held on April 30, 1997 and May 1, 1997, from 9:00 a.m. until 5:15 p.m. and May 2, 1997, from 9:00 a.m. until 12:00 Noon, at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005 in the Franklin/Adams Rooms. The purpose of this meeting will be to update the Council on the activities of the five active working groups: Consumer Confidence, Source Water Protection, Operator Certification, Small Systems and Occurrence and Contaminant Selection. There will also be a panel discussion on the Safe Drinking Water Act (SDWA) linkages with the National Water Program Office Directors. Briefings will be held on Regulatory Tools, Treatment Technologies and on linking the SDWA provisions under Consumer Right to Know.

This meeting is open to the public. The Council encourages the hearing of outside statements and will allocate one hour on April 30, 1997, for this purpose. Oral statements will be limited to ten minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285 or by E-Mail at shaw.charlene@epamail.epa.gov by April 28. 1997.

Any person who wishes to file a written statement can do so before or

after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, D.C. 20460. The telephone number is Area Code (202) 260–2285 or E-Mail shaw.charlene@epamail.epa.gov.

Dated: April 7, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–9384 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–729; FRL–5597–6]

W. Neudorff GmbH KG; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a regulation for an exemption from the requirement of a tolerance for residues of low erucic acid (less than 2%) rapeseed oil, i.e., canola oil, when used in accordance with good agricultural practice as an active ingredient in pesticide formulations applied to growing crops. The summary of the petition published in this notice was prepared by the petitioner.

DATES: Comments, identified by the docket number [PF–729], must be received on or before, May 12, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). 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: Sheryl Reilly, Regulatory Action Leader (PM 90), Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor, CS 1-5W29, 2800 Crystal Drive, Arlington, VA, Telephone No. 703–308–8265, e-mail: reilly.sheryl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4747) from W. Neudorff GmbH KG (''Neudorff''), c/o Walter Telarek, 1008 Riva Ridge Drive, Great Falls, VA 22066, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the insecticide, canola oil, on growing crops. 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, W. Neudorff GmbH KG 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 W. Neudorff GmbH KG; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the document control number [PF–729].

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket number ''PF–729'' (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 rulemaking record is located at the Virginia 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 PF–729; FRL–5597––6. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects

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

Dated: March 28, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Below is a summary of the pesticide petition. The summary of the petition was prepared by the petitioner. 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.

W. Neudorff GmbH KG

PP 6F4747

A. Proposed Use Practices

1. *Recommended application method and rate(s), frequency of application, and timing of application.* Spray tanks and sprinkler irrigation systems may be used. The rate of application is 3.84 to 7.68 gallons of active ingredient per acre. The frequency and timing of application vary widely according to the crop being treated. For example: for fruit and nut trees, the product is applied during the dormant and pre-bloom stages and during the summer; for sugar beets, the product is applied as needed; and for cotton, the product is applied when insects appear, and thereafter, weekly as needed.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient is low erucic acid (less than 2%) rapeseed oil, i.e., canola oil. Canola oil is the full refined edible oil obtained from certain varieties of plants, i.e., *Brassica napus* or *B. campestris* of the family Cruciferae. The organic substance is rapidly degraded in the environment to organic constituents by normal biological, physical and chemical processes that can be reasonably expected to exist where the pesticide is applied.

2. *Magnitude of residue anticipated at the time of harvest and method used to determine the residue.* Neudorff has requested waivers for these data requirements. The waiver requests were based on canola oil's known low toxicity and risks, natural occurrence and abundance in the environment, widespread use as an edible fat and oil in foods, FDA generally recognized as safe (GRAS) status (21 CFR 184.1555(c)), non-toxic mode of action, anticipated low volume use in pesticide products, and the data available in the open literature. Further, EPA has already promulgated an exemption from the requirement for a tolerance for canola oil when it is used as a surfactant or related adjuvant of a surfactant in pesticide formulations applied to growing crops (40 CFR 180.1001(d)). In addition, EPA has expressly waived these data requirements for soybean oil, which is a vegetable oil whose fatty acid profile is very similar to that of canola oil.

3. *Statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Neudorff has not proposed an analytical method, because canola oil levels harmful to plants and animals are highly unlikely to occur when it's formulated canola oil product is applied according to label instructions. Moreover, it is an organic compound known to be rapidly degraded in the environment to organic constituents by normal biological, physical and chemical processes that can be reasonably expected to exist where the pesticide is applied. Furthermore, the oils, or triglycerides, within canola oil already exist as normal constituents of the plants being treated. Last, there is no information indicating that this substance, its metabolites, and degradates either are absorbed by or cannot be metabolized by plants.

C. Mammalian Toxicological Profile

1. *Acute toxicity.* Available literature indicates that this substance has low acute toxicities. In addition, FDA has promulgated a regulation granting GRAS status to this substance (21 CFR 184.1555(c)).

2. *Genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity.* Canola oil is a food that is readily metabolized by humans. There is adequate information available from literature sources to characterize the toxicity of canola oil. These studies indicate that canola oil's nutritional and toxicological profile is similar to those of other vegetable oils (50 FR 3745, 3752, January 28, 1985). Moreover, the available literature indicates that the use of this substance as a component of food is safe (50 FR 3745, 3753).

D. Aggregate Exposure

1. *Dietary exposure—a. Food*. Canola oil is used as a fat and oil in food consumed by humans. FDA has promulgated a regulation listing canola oil as GRAS when used as a direct food additive (21 CFR 184.1555(c)). Moreover, FDA has stated that the upper level of canola oil likely to be ingested by a U.S. consumer is safe (50 FR 3745).

b. *Drinking water.* There is unlikely to be any exposure to this substance via drinking water. Even though the chemical can be washed off treated plants by rain and during processing of crops by water, it is an organic compound known to be rapidly degraded in the environment into organic constituents by normal biological, physical, and chemical processes.

2. *Non-dietary exposure*. The only non-dietary exposure expected is to applicators. However, exposure to this chemical resulting from its application according to label directions is not expected to present any risk of adverse health effects.

E. Cumulative Exposure

This substance has been designated by FDA as a GRAS food substance. It is a vegetable oil that has been used as a cooking oil and in margarine for many years. Because of these facts, and the fact that canola oil has a higher ratio of unsaturated fats to saturated fats than other vegetable oils, no cumulative adverse health effects are expected from long-term exposure to this chemical.

1. *Exposure through other pesticides and substances with the common mode of toxicity as this pesticide.* Canola oil is an insect repellant which belongs to a class of structurally related compounds known as vegetable oils. This class includes corn, cottonseed, sesame and soybean oils. Of these, only soybean oil is a currently registered pesticide. Vegetable oils have a nontoxic mode of action; it has been theorized that they (a) alter the cuticle structure of the leaf surface, thus repelling the insects, or (b) act as irritants to insects. Consequently, the nontoxic mode of action for vegetable oils appears to be as functional blockades to the metabolic abilities or feeding abilities of insects. These compounds are approved for food uses in the United States and are recognized by the Food and Drug Administration as safe. Vegetable oils could be considered in an aggregate exposure assessment; however, there is no information showing that these compounds cause significant adverse effects to mammals or that the use of soybean oil and canola oil as insecticides will result in significant additional exposure. Moreover, Neudorff has no information indicating or suggesting that canola oil has toxic effects on animals that would be cumulative with those of any other compound.

F. Safety Determination

1. *U.S. population*. Canola oil is a direct food additive that is considered GRAS by FDA (21 CFR 184.1555(c)). It is commonly used as a human food, i.e., as a fat or oil in food. Moreover, EPA has promulgated an exemption from the requirements for a tolerance for canola oil when it is used in accordance with good agricultural practice as a surfactant or related adjuvants of surfactants in pesticide formulations applied to growing crops (40 CFR 180.1001(d)). Canola oil is widely distributed in commerce and available to the general public throughout the United States for non-pesticidal uses. Canola oil has a non-toxic mode of action for the target pests. It is an organic compound known to be rapidly degraded in the environment to organic constituents by

normal biological, physical and chemical processes that can be reasonably expected to exist where the pesticide is applied. Use of canola oil as an active ingredient in the products sought to be registered is expected to be low, and is not likely to result in adverse human health effects, based upon available reports and information. Since people are exposed to this substance from food or other sources, the incremental exposure from its use in pesticide products is expected to be negligible.

2. *Infants and children.* FDA's GRAS determination applies equally to adults and infants and children, with the exception of the chemical's use in infant formulas. This exception is due to FDA not evaluating the use, however. Moreover, the fatty acid profile for canola oil is similar to the fatty acid profiles for other vegetable oils. All vegetable oils are metabolized the same; and human metabolic pathways are well-established. In essence, vegetable oils are broken down in the digestive tract into useful components that are either burned as fuel or stored as fat for later use by the body. Furthermore, there is nothing about the chemistry of this substance or the anticipated levels of it that will be consumed by infants and children to indicate that their normal homeostatic mechanisms will not be protective.

G. Existing Tolerances

1. *Existing tolerances or tolerance exemptions.* EPA has promulgated an exemption from the requirement for a tolerance for canola oil (low erucic acid rapeseed oil conforming to 21 CFR 184.1555(c)) when it is used in accordance with good agricultural practice as a surfactant or related adjuvants of surfactants in pesticide formulations applied to growing crops (40 CFR 180.1001(d)).

2. *International tolerances or tolerance exemptions.* No maximum residue level has been established for this substance by the Codex Alimentarius Commission.

[FR Doc. 97–9386 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181042; FRL 5598–5]

Emamectin Benzoate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Hawaii Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide emamectin benzoate (CAS 137512–74–4) (formulated as ''Proclaim 5SG'') to control the diamondback moth on up to 1,000 acres of head and Chinese *Napa* cabbage in Hawaii. The Applicant proposes the use of a ''new'' chemical (an active ingredient not currently found in any registered product). In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 15, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181042,'' 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 #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: Olga Odiott, Registration Division (7505W), Office of Pesticide Programs, 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, (703) 308–6418; e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of emamectin benzoate on head and Chinese *Napa* cabbage to control the diamondback moth. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that the diamondback moth has become resistant to registered materials, which were formerly effective at providing control. Growers using these products have experienced significant yield reductions due to feeding damage by the diamondback moth, when it was not adequately controlled through use of registered materials. The Applicant states that although several alternative control practices have been adopted by many cabbage growers, these alternatives are only partially effective, and that without an effective control such as emamectin benzoate, cabbage growers in Hawaii will likely suffer severe economic losses.

The Applicant proposes to apply emamectin benzoate at a rate of 0.0075 lbs. active ingredient (a.i.) per acre with a maximum of six applications per crop season, but no more than 0.045 lbs., a.i. applied per acre per crop season. The proposed use is for up to 1,000 acres of head and Chinese *Napa* cabbage. Therefore, use under this exemption could potentially amount to a maximum total of 45 lbs. of the active ingredient, emamectin benzoate. This is the second time an exemption request for this use has been requested.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181042] (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–181042]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Hawaii Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: April 2, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–9387 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50828; FRL–5598–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicant. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

264–EUP–104. Extension. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allows the use of 3.0 pounds of the insecticide 5-amino-1-(2,6-dichloro-4-(trifluoromethyl)phenyl)-4-((1,R,S)-(trifluoromethyl)sulfinyl)-1-H-pyrazole-carbonitrile on 60 acres of rice to evaluate the control of the rice water weevil. The program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, and Texas. The experimental use permit is effective from March 7, 1997 to March 7, 1998. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Rick Keigwin, PM 10, Rm. 210, CM #2, (703) 305–6788, e-mail: keigwin.rick@epamail.epa.gov)

264–EUP–105. Extension. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allows the use of rice seed treated with 1.95 pounds of the insecticide 5-amino-1-(2,6-dichloro-4-(trifluoromethyl)phenyl)-4-((1,R,S)-(trifluoromethyl)sulfinyl)-1-H-pyrazole-carbonitrile on 50 acres of rice to evaluate the control of the rice water weevil. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from March 7, 1997 to March 7, 1998. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Rick Keigwin, PM 10, Rm. 210, CM #2, (703) 305–6788, e-mail: keigwin.rick@epamail.epa.gov)

264–EUP–110. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allows the use of 21 pounds of the herbicide 5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethylbenzoyl)isoxazole on 150 acres of field corn to evaluate the control of various broadleaf weeds and grasses. The program is authorized only in the States of Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, and Wisconsin. The experimental use permit is effective from March 14, 1997 to March 14, 1998. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, (703) 305–6224, e-mail: miller.joanne@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 4, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–9377 Filed 4–10–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

April 4, 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 10, 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: Auction Forms and License Transfer Disclosures.

Type of Review: New Collection.

Respondents: Businesses or other for-profit entities.

Category	Number of respondents	Estimated time for response (hours)
Ownership and Gross Revenues Information	15,000	4
Disclosure of Terms of Joint Bidding Agreements	15,000	.5
Transfer Disclosures	3,000	.5

Total Annual Burden: 33,000 × 5 hours = 165,000 hours.

Total Cost to Respondents: $200/hour × 165,000 hours = $33,000,000.

Needs and Uses: The ownership, gross revenues and joint bidding agreement information portions of this collection will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to be a licensee. Without such information, the Commission could not determine whether to issue the licenses to the applicants that provide telecommunications, multi-channel video programming distribution and other communications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The information will also be used to ensure the market integrity of future auctions. Likewise, the information collected in connection with Section 1.2111(a) of the Commission's rules, 47 CFR 1.2111(a) (transfer disclosures), will be used to maintain the market integrity of future auctions and prevent unjust enrichment.

OMB Approval Number: 3060–0105.

Title: Licensee Qualification Report.

Form No.: FCC 430.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Number of Respondents: 24,583.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 49,166 hours.

Needs and Uses: This collection of information enables Commission personnel to determine whether applicants are legally qualified to become or to remain common carrier telecommunications licensees. If the information is not collected, the Commission would be unable to fulfill its responsibility under the Communications Act to make a finding as to the legal qualifications of an applicant or licensee. The data collected is required by the Communications Act of 1934, as amended; FCC Rules 21.11(a), 22.11(a), 25.11(a), 25.114(c), 25.115(c), and 25.141(c).

To reduce paperwork burden, applicants may submit letters in lieu of completing the FCC 430 in those cases in which there has been no change in any of the required information to satisfy the annual requirement.

In the *Fifth Notice of Proposed Rulemaking,* Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552), the Commission concluded that any holder of a Phase II EA, Regional, or nationwide 220 MHz license will be permitted to partition portions of its authorization. In the *Fifth Notice of Proposed Rulemaking,* Redesignation of 27.5 GHz Frequency Band, Establishing Rules and Policies for Local Multipoint Distribution Service (LMDS) (NPRM CC Docket No. 92–297), the Commission proposes that this form will be used to complete the disaggregation and partioning of LMDS.

This form may also be used in the future disaggregation and partioning for a variety of spectrum based services licensed by the Commission. Specific Rules will be adopted in Reports and Orders or by Public Notice for each service subject to disaggregation and partioning.

The burden reflects an increase in the number of respondents from 1,900 to 24,583 (1,533—LMDS; 21,150—220MHz) and total burden hours from 3,800 to 49,166 (2 hours per form).

OMB Approval Number: 3060–0319.

Title: Application for Assignment of Authorization or Consent to Transfer of Control of License.

Form No.: FCC 490.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 28,500.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 85,500 hours.

Needs and Uses: FCC Form 490 is filed to solicit Commission approval to assign a radio station authorization to another party or to transfer control of a licensee. The requested information is used by the Commission in carrying out its duties as set forth in Sections 308 309 and 310 of the Communications Act. Various sections in 47 CFR Parts 22, 24 and 90 require submission of FCC Form 490.

In the *Fifth Notice of Proposed Rulemaking,* Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552), the Commission concluded that any holder of a Phase II EA, Regional, or nationwide 220 MHz license will be permitted to partition portions of its authorization. This form may also be used in the future disaggregation and partioning for a variety of spectrum based services licensed by the Commission. Specific Rules will be adopted in Reports and Orders or by Public Notice for each service subject to disaggregation and partioning.

The burden reflects an increase in the number of respondents from 5,000 to 28,500 for 220 MHz and total burden hours from 15,000 to 85,500 (3 hours per form).

OMB Approval Number: 3060–0623.

Title: Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization.

Form No.: FCC 600.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; Individuals or Households; Not-

for-Profit institutions; Federal Government, State, Local or Tribal Government.

Number of Respondents: 245,053.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 980,212 hours.

Needs and Uses: The information requested by FCC Form 600 is used by Commission staff in carrying out its duties as set forth in Sections 308 and 309 of the Communications Act, 47, U.S.C. Sections 308 and 309, to determine the technical, legal and other qualification of the applicant to operate a station. FCC Form 600 is used by all commercial mobile radio service (CMRS) and private mobile radio service (PMRS) applicants in all terrestrial mobile services including the Personal Communications Services (PCS) applicants. The FCC Form 600 is required by various rule sections in 47 CFR Parts 1, 22, 24 and 90. FCC Form 600 is also used by most license winners of FCC auctions to date.

In the *Fifth Notice of Proposed Rulemaking,* Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552), the Commission concluded that any holder of a Phase II EA, Regional, or nationwide 220 MHz license will be permitted to partition portions of its authorization. In the *Fifth Notice of Proposed Rulemaking,* Redesignation of 27.5 GHz Frequency Band, Establishing Rules and Policies for Local Multipoint Distribution Service (LMDS) (NPRM CC Docket No. 92–297), the Commission proposes that this form will be used to complete the disaggregation and partioning of LMDS. This form may also be used in the future disaggregation and partioning for a variety of spectrum based services licensed by the Commission. Specific Rules will be adopted in Reports and Orders or by Public Notice for each service subject to disaggregation and partioning.

The burden reflects an increase in the number of respondents from 194,769 to 245,053 (47,000—220 MHz; 3,284—LMDS) and total burden hours from 779,076 to 980,212 (average 4 hours per form).

OMB Approval Number: 3060–0068.

Title: Application for Consent to Assignment of Radio Station Construction Authorization or License (For Stations in Services Other Than Broadcast).

Form No.: FCC 702.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other For-Profit.

Number of Respondents: 2,644 .

Estimated Time Per Response: 5 hours.

Total Annual Burden: 13,220 hours.

Needs and Uses: This collection of information is used to request Commission approval of assignment of radio station construction authorization or license. The form is required by Section 310(d) of the Communications Act; and FCC Rules—47 CFR Parts 5.55, 21.11, 21.38, 21.39, 23.50, 25.118 and 101.15.

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. In the *Third Report and Order,* Redesignation of 27.5 GHz Frequency Band, Establishing Rules and Policies for Local Multipoint Distribution Service (LMDS) (NPRM CC Docket No. 92–297), the Commission concluded that any LMDS licensee will be permitted to partition or disaggregate portions of its authorization. The *Fifth Notice of Proposed Rulemaking* proposes that this form will be used to complete the disaggregation and partioning of LMDS. The burden reflects an increase in the number of respondents from 1,000 to 2,644 and total burden hours from 5,000 to 13,220.

This form may also be used in the future disaggregation and partioning for a variety of spectrum based services licensed by the Commission. Specific rules will be adopted in Reports and Orders or by Public Notice for each service subject to disaggregation and partioning.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–9322 Filed 4–10–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Joint Policy Statement on Improper and Illegal Payments by Banks and Bank Holding Companies

AGENCIES: The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively the Agencies).

ACTION: Withdrawal of statement of policy.

SUMMARY: The Agencies are withdrawing their joint statement of policy entitled ''Joint Policy Statement Concerning Improper Payments by Banks and Bank Holding Companies'' (Statement of Policy) because it is no longer useful in the ongoing supervision of banks and bank holding companies. The Office of Thrift Supervision (OTS) which was not a party to the Statement of Policy, joins the Agencies in this action.

EFFECTIVE DATE: The removal of the Statement of Policy is effective April 11, 1997.

FOR FURTHER INFORMATION CONTACT:

FRB: Jack Jennings, Assistant Director, Division of Banking Supervision & Regulation (202/452–3053), 20th and C Street, NW., Washington, D.C. 20551.

FDIC: R. Eugene Seitz Review Examiner, Division of Supervision (202/898–6793), 550 Seventeenth Street, NW, Washington, D.C. 20429.

OCC: Daniel Stipano, Director of Enforcement and Compliance, (202/874–4800), 250 E Street, SW., Washington, D.C. 20219. OTS: Donna Deale, Senior Program Manager, Supervision Policy, (202/906–7488), 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Agencies issued the Statement of Policy on January 13, 1978 (43 FR 2759, January 19, 1978) to announce that certain payments, improper and illegal political contribution, bribes, and kickback besides being a violation of the Foreign Corrupt Practices Act of 1977, Pub. L. 95–213, 91 Stat. 1494 (FCPA 1977), constitute unsafe and unsound banking practices.

The Agencies have incorporated sufficient reference material to the FCPA 1977 in their respective examination manuals and do not routinely issue policy statements governing other criminal statutes related to banks and bank holding companies. As such, the Agencies are rescinding the Statement of Policy and believe that the information contained in the Statement of Policy is self-evident.

The Agencies acknowledge that all banks, bank holding companies and subsidiaries thereof are expected not only to conduct their operations in accordance with applicable laws but also to refrain from making payments that may constitute unsafe and unsound banking practices. Where violations of law or unsafe and unsound banking practices result from improper payments, the appropriate agency will exercise its full legal authority, including cease-and-desist proceedings

and referral to the appropriate law enforcement agency for further action, to ensure that such practices are terminated. In appropriate circumstances, the fact that such payments have been made may reflect so adversely on an organization's management as to be a relevant factor in connection with the consideration of applications submitted by the organization.

The Agencies' Action

The Agencies hereby withdraw the Statement of Policy.

Dated at Washington, DC this 7th day of April 1997.

Federal Financial Institutions Examination Council

Joe M. Cleaver,

Executive Secretary.

[FR Doc. 97–9335 Filed 4–10–97; 8:45 am]

BILLING CODES 6210–01–P, 6720–01–P, 6714–01–P, and 4810–33–P

FEDERAL HOUSING FINANCE BOARD

[No. 97–N–3]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank Services.

SUMMARY: The Federal Housing Finance Board (Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: April 11, 1997.

FOR FURTHER INFORMATION CONTACT: Gary B. Townsend, Deputy Director, Office of Supervision (202) 408–2540; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, 3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Board.

Section 943.6(c) of the Board's regulations (12 CFR 943.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedules are for the three Banks which offer item processing services to their members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their member or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (1997 NOW/DDA Services)

(Services Not Provided)

District 2.—Federal Home Loan Bank of New York (1997 NOW/DDA Services)

(Does Not Provide Item Processing Services for Third Party Accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (1997 NOW/DDA Services)

DPS Deposit Tickets—$0.5900 Per Deposit, Printing of Deposit Tickets

Deposit processing service (DPS)	Pass-through pricing varies—tiered by monthly volume
Deposit Items Processed for volumes of	
1–25,000	$0.0375 per item (transit)
25,001–58,500	0.0369 per item
58,501–91,500	0.0364 per item
91,501–125,000	0.0358 per item
125,001–158,500	0.0353 per item
158,501–191,500	0.0347 per item
191,501–over	0.0342 per item
Deposit Items Encoded (West) Pricing varies—tiered by monthly volume for volumes of	
1–25,000	$0.0311 per item
25,001–58,500	0.0306 per item
58,501–91,500	0.0301 per item
91,501–125,000	0.0296 per item
125,001–158,500	0.0291 per item
158,501–191,500	0.0286 per item
191,501–over	0.0281 per item
Deposit Items Encoded (East) Pricing varies–tiered by monthly volume for volumes of	
1–25,000	$0.0332 per item
25,001–58,500	0.0327 per item
58,501–91,500	0.0322 per item
91,501–125,000	0.0317 per item
125,001–158,500	0.0312 per item
158,501–191,500	0.0307 per item
191,501–over	0.0302 per item

Deposit processing service (DPS)	Pass-through pricing varies—tiered by monthly volume
Deposit Items Returned	1.8500 per item
Deposit Items Photocopied	3.6500 per photocopy
DPS Photocopies—Subpoena	18.3500 per hour of processing time, plus 0.2500 per photocopy
Deposit Items Rejected (applicable to pre-encoded deposits only)	0.2300 per rejected item
DPS Transportation (West)	8.7500 per pickup
DPS Transportation (East)	8.7500 per pickup
Return Check Courier Service	128.0000 per month
Depository Account Services	
Mail Deposits	$5.5000 per deposit
''On-Us'' Returns Deposited:	
Qualified Returns	0.5200 per item
Raw Returns	2.0600 per item
Bond Coupon Collection	6.5000 per envelope
Bond Coupon Returns	20.0000 per coupon
Bond Collection:	
Bearer	23.0000 per bond
Registered	31.0000 per bond
Deposit Transfer Vouchers	5.4000 per item
Canadian Item Collection	5.2500 per item
Other Foreign Item Collection	Pass-through
Electronic Funds Transfers	
Incoming Wire Transfers	$6.0000 per transfer
Outgoing Wire Transfers (Automated/Link)	7.0000 per transfer
Outgoing Wire Transfers (Manual)	10.0000 per transfer
Fax of Wire Transfer Advice	To Be Announced
Internal Book Transfers (Automated/Link)	No Charge
Internal Book Transfers (Manual)	1.0000 per transfer
Foreign Wire Surcharge	30.0000 per transfer*
Expected Wires Not Received	Penalty Assessed**
ACH Transaction Settlement (CR)	0.2650 per transaction
ACH Transaction Settlement (DR)	0.2650 per transaction
ACH Origination Items (CR)	0.2000 per item
ACH Origination Items (DR)	0.2000 per item
ACH Origination Record Set-Up	1.5500 per record
ACH Origination Items Returned	5.0000 per returned item
ACH Returns/NOC's—Facsimile	2.1500 per transaction
ACH Returns/NOC's—Telephone	3.4500 per transaction
ACH/FRB Priced Service Charges	0.2800 per transaction

***Note:** This surcharge will be added to the amount of the outgoing funds transfer to produce a single total debit to be charged to the customer's account on the date of transfer.

****Note:** Standard penalty is equivalent to the amount of the wire(s) times the daily IOD rate, divided by 360. If the wire not received causes the Bank to suffer any penalty, deficiency, or monetary loss, any and all related costs will also be assessed.

Federal Reserve Settlement	
FRB Statement Transaction (CR)	$0.5700 per transaction
FRB Statement Transaction (DR)	0.5700 per transaction
Reserve Requirement Pass-Thru	25.7500 per month (active)
Correspondent Transaction (DR)	0.5700 per transaction
Direct Send Settlement	144.0000 per month
FRB Inclearing Settlement	144.0000 per month
FRB Coin and Currency Settlement	30.0000 per month
Demand Deposit Services	
Clearing Items Processed	$0.1500 per item
Clearing Items Fine Sorted (for return with Bank statements)	0.0750 per item
Reconcilement Copies—Manual	0.0900 per copy
Reconcilement Copies—MagTape	0.0500 per copy
Reconcilement MagTape Processing	Pass-through
Reconcilement Copies—Voided	0.0410 per copy
Check Photocopies—Mail	3.8500 per photocopy
Check Photocopies—Telephone/Fax	4.6500 per photocopy
Check Photocopies—Subpoena	0.6700 per photocopy
Stop Payment Orders	16.7500 per item
FRB Return Items	0.5200 per item

Deposit processing service (DPS)	Pass-through pricing varies—tiered by monthly volume
FRB Return Items Over $2,500	6.0000 per item
Collections and Forgeries	15.5000 per item
Imprinting of Standard Checks	0.1150 per item
Non-Standard Imprinting	Pass-through
Microfiche Copies	5.1500 per copy
Request for Fax/Photocopy	3.0000 per document

Image Statement Services
Proof of Deposit (POD) Service

*Pricing for each of these premium services is customer-specific, based upon individual service requirements; please call your Marketing representative at (800) 288–3400 for further information.

Coin and Currency Service: Western Service Area

Currency Orders	$0.3650 per $1,000*
Coin Orders	2.4200 per box
Currency Deposits	1.2800 per $1,000*
Coin Deposits	1.8500 per standard bag
Coin Deposits (Non-Standard)	2.8500 per non-standard bag
Coin Deposits (Unsorted)	8.5000 per mixed bag
Food Stamp Deposits	1.8000 per $1,000*
Coin Shipment Surcharge	0.2500 per excess bag**
C&C Transportation (Zone W1)	16.6000 per stop
C&C Transportation (Zone W2)	28.1000 per stop
C&C Transportation (Zone W3)	37.3500 per stop
C&C Transportation (Zone W4)	Negotiable***

Coin and Currency Service: Eastern Service Area

Currency Orders	$0.3200 per $1,000*
Coin Orders	2.8500 per box
Currency Deposits	1.2800 per $1,000*
Coin Deposits	1.8500 per standard bag
Coin Deposits (Non-Standard)	2.8500 per non-standard bag
Coin Deposits (Unsorted)	8.5000 per mixed bag
Food Stamp Deposits	1.8000 per $1,000*
Coin Shipment Surcharge	0.2500 per excess bag**
C&C Transportation (Zone E1)	25.1000 per stop
C&C Transportation (Zone E2)	34.8500 per stop
C&C Transportation (Zone E3)	53.3500 per stop
C&C Transportation (Zone E4)	Negotiable***

***Note:** Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.
****Note:** A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.
*****Note:** Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

Check Processing (Inclearing)

Checks Processed for volumes of	Pricing varies—tiered by monthly volume
1–25,000	$0.0445 per item
25,001–58,500	0.0419 per item
58,501–91,500	0.0393 per item
91,501–125,000	0.0367 per item
125,001–158,500	0.0342 per item
158,501–191,500	0.0316 per item
191,501–350,000	0.0290 per item
350,001–500,000	0.0264 per item
500,001–over	0.0239 per item

Full Backroom Service (Item Processing Charges)

Non-Truncated Checks for volumes of	Pricing varies—tiered by monthly volume
1–25,000	$0.0585 per item
25,001–58,500	0.0570 per item
58,501–91,500	0.0555 per item
91,501–125,000	0.0540 per item
125,001–158,500	0.0525 per item
158,501–191,500	0.0510 per item
191,501–350,000	0.0495 per item
350,001–500,000	0.0465 per item
500,001–over	0.0435 per item
Truncated Checks for volumes of	**Pricing varies—tiered by monthly volume**
1–25,000	$0.0485 per item

Deposit processing service (DPS)	Pass-through pricing varies—tiered by monthly volume
25,001–58,500	0.0470 per item
58,501–91,500	0.0455 per item
91,501–125,000	0.0440 per item
125,001–158,500	0.0425 per item
158,501–191,500	0.0410 per item
191,501–350,000	0.0395 per item
350,001–500,000	0.0365 per item
500,001–over	0.0335 per item
Modified Backroom Service (Item Processing Charges)	
Non-Truncated Checks for volumes of	Pricing varies—tiered by monthly volume
1–25,000	$0.0485 per item
25,001–58,500	0.0470 per item
58,501–91,500	0.0455 per item
91,501–125,000	0.0440 per item
125,001–158,500	0.0425 per item
158,501–191,500	0.0410 per item
191,501–350,000	0.0395 per item
350,001–500,000	0.0365 per item
500,001–over	0.0335 per item
Truncated Checks for volumes of	Pricing varies—tiered by monthly volume
1–25,000	$0.0385 per item
25,001–58,500	0.0370 per item
58,501–91,500	0.0355 per item
91,501–125,000	0.0340 per item
125,001–158,500	0.0325 per item
158,501–191,500	0.0310 per item
191,501–350,000	0.0295 per item
350,001–500,000	0.0265 per item
500,001–over	0.0235 per item
Check Processing (Associated Services)	
Over-The-Counter Items	$0.1850 per item
OTC Item Transportation	10.0000 per month
Special Cycle Sorting	0.0220 per item
Mid-Cycle Statement (Purged)	0.5400 per item (Min $2.70)
Mid-Cycle Stmt. (Non-Purged)	2.6800 per statement
Check (NOW) Statement Processing:	
Statements using Generic Envelopes	0.0610 per envelope
Statements using Custom Envelopes	0.1000 per envelope
Statements using Large Envelopes	0.5750 per envelope
Envelope Destruction Fee	0.0300 per envelope
Additional Stuffer Processing	0.0250 per stuffer
(one stuffer per statement free—applicable to all additional stuffers)	
Selective Stuffer Processing	0.0680 per statement
Daily Report Postage	Pass-through
Statement Postage	Pass-through
Standard Return Calls	1.3000 per item
Automated Return Calls	0.2626 per item
Return Calls via Link	0.7500 per item
Late Return Calls	2.5000 per item
FRB Return Items	0.5200 per item
FRB Return Items Over $2,500	6.0000 per item
Check Photocopies—Mail	3.8500 per photocopy
Check Photocopies—Telephone/Fax	4.6500 per photocopy
Check Photocopies—Subpoena	0.6700 per photocopy
Signature Verification Copies	0.7750 per copy
Check Retrieval	1.5500 per item
MICRSort Option (Fixed Fee)	27.0000 per month
MICRSort Option (per item)	0.0310 per item
Check Reconcilement Service	(See Separate Section)
Collections and Forgeries	15.5000 per item
MCPJ Microfiche Service	0.0021 per item
(Min. $15.00, Max. $75.00)	
Microfiche Copies	5.1500 per copy
Microfilm Processing	5.4000 per roll
Microfilm Duplication	11.0000 per roll
Transportation	Pass-through

Deposit processing service (DPS)	Pass-through pricing varies—tiered by monthly volume
Statement Savings Processing	
Statements using Generic Envelopes	$0.1020 per envelope
Statements using Custom Envelopes	0.1300 per envelope
Statements using Large Envelopes	0.5850 per envelope
Check Reconcilement Service*	
Reconcilement Items Processed	$0.2250 per item
Stop Payment Orders	10.0000 per item
Microfiche Copies	3.0000 per copy
Account Reconcilement	15.0000 per account

***Note:** Individual service charges are detailed in a monthly statement provided specifically for this service. The net of these charges is posted to Check Processing and appears as a single line item on the monthly billing statement.

Account Maintenance	
Demand Deposit Accounts	$21.7500 per month, per account
Cut-Off Statements	10.0000 per statement
Telephone Balance Inquiry	2.0000 per telephone call
Paper Advice of Transactions (DTS)	1.0000 per account/statement
Daily Transaction Data via Link	No Charge

Account Overdraft Penalty

Greater of $75.00 per day and the daily interest on the amount of the overdraft (Rate used for calculation equal to the highest posted advance rate plus 3.0%)

Attention: Customers Receiving Transportation Charges Under Any Service

Rates and charges relative to transportation vary depending on the location of the office(s) serviced. Details regarding the pricing for the transportation to/from specific institutions or individual locations will be provided upon their subscription to that service.

Surcharges may be applicable and will be applied to the customer as effective and without prior notice.

District 4.—Federal Home Loan Bank of Atlanta (1997 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 5.—Federal Home Loan Bank of Cincinnati (1997 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 6.—Federal Home Loan Bank of Indianapolis (1997 NOW/DDA Services)

Cash Management Services

Transaction Charges	
Paid Check charge	$0.16 per item
Paper Advice	.065 per item
Tape Advice	.040 per item
Stop Payments	6.00 per stop
Photocopies	2.50 per copy
Fine Sort Numeric Sequence	.025 per item
Collection/Return/Exception	5.00
Daily Statement	2.00
Maintenance	30.00 per month
Debit Entries	N/C
Credit Entries	N/C
Checks (Administration Fee)	.02 per item
Special Cutoff	N/C
Infoline	50.00 per month
VRU (Voice Response)	1.00 per inquiry

Collected Balances Will Earn Interest at the CMS Daily Posted Rate.

NOW Account Services
Transaction Charges

Monthly volume	Safekeeping		Turnaround (Daily or cycled)		Complete		Image*	
	Per item	Cost	Per item	Cost	Per item	Cost	Per item	Per statement
5,000	$.053	$265.	$.0635	$317.5	$.0875	$437.5	$.06	$.40

Monthly volume	Safekeeping		Turnaround (Daily or cycled)		Complete		Image*	
	Per item	Cost	Per item	Cost	Per item	Cost	Per item	Per statement
5,001–10,000	.045	225.	.0585	.295.5	.0855	427.5	.06	.40
10,001–15,000	.044	220.	.0545	272.5	.0835	417.5	.06	.40
15,001–25,000	.039	390.	.0475	475.0	.0825	825.0	.06	.40
25,001–50,000	.038	950.	.0435	1,087.5	.0805	2,012.5	.06	.40
50,001–75,000	.034	850.	.0405	1,012.5	.0765	1,912.5	.06	.40
75,001–100,000	.031	775.	.0375	937.5	.0755	1,887.5	.06	.40
100,001–and up	.029	.....	.0345	.....	.0745	.....	.06	.40

Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

* Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

Ancillary Services Fees

Large Dollar Signature Verification	$0.50
Over-the-counters and Microfilm	0.035
Return Items	2.15
Photocopies** and Facsimiles	2.50
Certified Checks	1.00
Invalid Accounts	0.50
Late Returns	0.50
Invalid Returns	0.50
No MICR/OTC	0.50
Settlement Only	100.00 per month
+Journal Entries	3.00 each
Encoding Errors	2.75
Fine Sort Numeric Sequence	0.02
Access to Infoline	50.00 per month
High Dollar Return Notification	N/C
Debit Entries	N/C
Credit Entries	N/C
Standard Stmt. Stuffers (up to 2)***	N/C

** Photocopy request of 50 or more are charged at an hourly rate of $15.00.

*** Each additional (over 2) will be charged at $.02 per statement.

	Fee
Wire Transfer Services	
In (Per transfer) Domestic	$4.00
Out (Per transfer) Domestic	7.50
International Wires	25.00
Depository Transfer Checks	
Per Check	2.00
Treasury Tax and Loan Settlement Services	
Per Transaction	2.00
Charge Card Transaction	
Per Transaction	1.50
Automated Clearing House (ACH) Service	
Tape Transmission	8.50
or Origination	.045 per item
MACHA, INDEX	Actual Federal Reserve Charges
ACH Entries Clearing through our R&T Number	.25 per item
Settlement Only	$65.00 per month
ACH Returns/NOC	2.50 per item
Coin and Currency	
Deliveries—Indiana and Michigan Prices based on delivery location, excess bag fee (courier) and order preparation. Cost will vary per institution:	
Returns	12.50

	Fee
Non-Transit Customer	10.00
Orders (Member uses own courier)	15.00
Special Order *	15.00

* Any order placed after normal order has been received and processed by Federal Home Loan Bank.

Proof and Transit Processing

Pre-encoded Items:	
City	0.04 per item
RCPC	0.05 per item
Other Districts	0.085 per item
Unencoded	0.165 per item
Food Stamp	0.14 per item
Photocopies *	2.50 per copy
Adjustments on pre-encoded work	2.75 per error
E Z Clear	0.14 per item
Coupons	8.25 per envelope
Collections	6.00 per item
Cash Letter	2.00 per cash letter
Deposit Adjustments	0.30 per adjustment
Debit Entries	N/C
Credit Entries	N/C
Microfilming	N/C
Mortgage Remittance (Basic Service)	0.35
Settlement Only	100.00 per month
+Journal Entries	3.00 each
Third Party Fedline	0.50 each
Courier **	8.25 per location, per day, per pickup
Marion County.	
Other	Prices vary per location

* Multiple Photocopies (more than 50 per request) 15.00 hour.
** Includes branch work transfer and correspondence to and from Federal Home Loan Bank.
All Fees Subject to Change.

District 7.—Federal Home Loan Bank of Chicago (1997 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 8.—Federal Home Loan Bank of Des Moines (1997 NOW/DDA Services)

(Services not provided)

District 9.—Federal Home Loan Bank of Dallas (1997 NOW/DDA Services)

(Services not provided)

District 10.—Federal Home Loan Bank of Topeka (1997 NOW/DDA Services)

Deposit/Cash Letter Processing

Deposit Processing Fees—Encoded Items

State	Local	Local	Transit	Transit
Colorado	$.015	$.031	$.040	$.059
Kansas	.015	.041	.040	.067
Nebraska	.015	.039	.040	.061
Oklahoma	.015	.038	.040	.057

Encoding, Amount Field Only	$.023 per item
Encoding, Multiple Fields	.030 per item
Rejects on Encoded Items	.15 per item
Returns/Redeposits	.80 per item
Collections	10.00 per item
Courier and Armored Car	At cost
Research/Mass Photocopy Request $12 per hour +	.15 per item
ACH Settlement	0.50 per request
Item Retrieval (photocopy)	2.25 per request
Facsimile	1.75 per item

Demand Deposit Account *

Full Service Demand Disbursement

Cycled	.15 per item
Imaged	.13 per item
Truncated	.12 per item

Basic Demand Disbursement

Cycled	.11 per item
Imaged	.09 per item
Truncated	.08 per item
Maintenance Fee	25 per month
Debit	.15 per item
Credit	.15 per item
Large Item Return Notification	3 per item
Mass Photocopy Request $12 per hour +	.15 per item
Additional Statements	2.00
Item Retrieval (photocopy)	2.25
Facsimile	1.75
Postage	At cost

*All accounts earn interest on collected balances at 40 basis points below the overnight deposit rate.

Lockbox Processing

Items per month	Fees per item
1–50,000	$0.130
50,001–80,000	0.125
80,001–120,000	0.120
120,001–160,000	0.115
160,000–above	0.110
Processing Fee	100 per month
Exception Item Review/Processing	.07 per item
Photocopy Retrieval	2.25 per item
Facsimile	1.75 per item
Postage	At cost

Proof of Deposit Processing

Items per month	Data capture	Archival	Cycle	Account sort
1–50,000	$.011	$.012	$.009	$.010
*Truncated.—$.023 Cycled.—$.040				
50,001–100,000	.008	.012	.006	.010
*Truncated.—$.020 Cycled.—$.034				
100,001–150,000	.006	.010	.004	.008
*Truncated.—$.016 Cycled.—$.026				
150,001–250,000	.005	.010	.003	.008
*Truncated.—$.015 Cycled.—$.024				
250,001–500,000	.004	.010	.002	.008
*Truncated.—$.014 Cycled.—$.022				
500,001–above	.004	.009	.002	.008
*Truncated.—$.013 Cycled.—$.021				

Item Processing

Inclearing Fees

1–50,000	.009	.012	.009	.010
*Truncated.—$.021 Cycled.—$.038				
50,001–100,000	.006	.012	.006	.010
*Truncated.—$.018 Cycled.—$.032				
100,001–150,000	.004	.010	.004	.008
*Truncated.—$.014 Cycled.—$.024				
150,001–250,000	.003	.010	.003	.008
*Truncated.—$.013 Cycled.—$.022				
250,001–500,000	.002	.010	.002	.008
*Truncated.—$.012 Cycled.—$.020				
500,001–above	.002	.009	.002	.008
*Truncated.—$.011 Cycled.—$.019				

*Truncated includes the data capture and archival categories. Cycled includes the data capture, archival, cycle and account sort categories.

Return Item Fees

State	City	RCPC	Country	Transit
Colorado	$.19	$.29	$.35	$.73
Kansas	.15	.15	.30	.73
Nebraska	.25	.31	.37	.73
Oklahoma	.16	.20	.22	.73

Item Pull ..... $.86

Item Qualification	.25
Settlement with Processing	No charge
Settlement Only	100 per month
Large Item Return Notification	3 per item
Facsimile	1.75 per item
Archival	
Item Retrieval (photocopy)	2.25 per item
Mass Photocopy Requests $12 per hour +	.15 per item
Over-the-Counter Items	.03 per item
Statement Processing	
Truncated Statement	.08
Imaged Statement	.12
Cycled Statement	.24
EOM Statement Premium	.04
Per Insert (first insert is free)	.01
Statement Printing	
Imaged Check Printing (duplex) (24 checks per side)	.07 per page
Statement Data Printing	.07 per page
Maintenance Fee	250 per month
Customized Services	
Multiple Account	250 per month
Report Print Back	250 per month
Custom Programming/Conversions	120 per hour

District 11.—Federal Home Loan Bank of San Francisco (1997 NOW/DDA Services)

(Does not provide item processing for third party accounts)

District 12.—Federal Home Loan Bank of Seattle (1997 NOW/DDA Services)

(Does not provide item processing for third party accounts)

By the Federal Housing Finance Board.

Dated: April 3, 1997.

Bruce A. Morrison,

Chairman.

[FR Doc. 97–9302 Filed 4–10–97; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–006190–080.

Title: The Venezuelan American Maritime Association.

Parties: A.P. Moller-Maersk Line, Consorcio Naviero de Occidente C.A., Crowley American Transport, Inc., King Ocean Services, S.A., Sea-Land Service, Inc., Seaboard Marine of Florida, Inc., Venezuelan Container Line C.A.

Synopsis: The proposed amendment restates the Agreement. It also clarifies the responsibilities of the members regarding required financial guarantees and authorizes a review by Principals of neutral body decisions prior to seeking arbitration.

Agreement No.: 202–007540–070.

Title: U.S. Atlantic & Gulf Southeastern Caribbean Agreement.

Parties: Caribbean General Maritime, Ltd.; Crowley American Transport, Inc.; King Ocean Services; NPR, Inc.; Seaboard Marine Ltd.; Sea-Land Service, Inc.; Tecmarine Lines, Inc.; Tropical Shipping and Construction Co., Ltd.

Synopsis: The proposed Agreement amends Article 7—Membership—in regards to financial guarantees required of the members, and Article 10—Neutral Body Policing—by authorizing a Principals' review of Neutral Body decisions as an intermediate step before seeking arbitration.

Agreement No.: 202–010689–065.

Title: Transpacific Westbound Rate Agreement.

Parties: American President Lines, Ltd.; Hapag-Lloyd Container Linie GmbH; Kawasaki Kisen Kaisha, Ltd.; A. P. Moller-Maersk Line; Mitsui O.S.K. Lines, Ltd.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line, Inc.; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Sea-Land Service, Inc.

Synopsis: The subject modification provides that P&O Nedlloyd B.V. and P&O Nedlloyd Limited, as affiliated companies, will have a single vote on any matter within the scope of this agreement.

Agreement No.: 224–200555–05.

Title: Jacksonville Port Authority/ Trailer Bridge, Inc. Terminal Agreement.

Parties: Jacksonville Port Authority; Trailer Bridge, Inc.

Synopsis: The proposed modification amends Exhibit B—Schedule of Fees and Charges of the basic Agreement, and extends the term of the Agreement for five years.

By Order of the Federal Maritime Commission.

Dated: April 7, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–9362 Filed 4–10–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. App. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Speco International, Inc., 3405 N.W. 9th Avenue, Suite 1205, Ft. Lauderdale, FL 33309; Officer: Martin Katari, President

GEP International Freight Forwarder L.L.C. 111 Deerwood Road, Suite 280, San Ramon, CA 94583; Officers: Guillermo E. Pena, President, Frank Rosenberg, Vice President

Samson Transport (USA) Inc., 441 Schiller Street, Elizabeth, NJ 07206; Officers: Robert Walsh, President, Lars Buchwardt, Vice President

Dated: April 7, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–9323 Filed 4–10–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. 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 25, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ben Jay Scott, Coleman, Texas; to acquire an additional 8.78 percent, for a total of 16.79 percent, of the voting shares of Coleman Bancshares, Inc., Coleman, Texas, and thereby indirectly acquire Coleman County State Bank, Coleman, Texas.

Board of Governors of the Federal Reserve System, April 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9330 Filed 4–10–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 28, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Tammy Bolton Montgomery, Golden, Mississippi, as Trustee for The Weatherford Foundation of Red Bay, Alabama, Inc., Red Bay, Alabama; to vote 60.90 percent of the voting shares of Independent Bancshares, Inc., Red Bay, Alabama, and thereby indirectly acquire Bank of Red Bay, Red Bay, Alabama.

Board of Governors of the Federal Reserve System, April 8, 1997

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9443 Filed 4–10–97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 May 5, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303-2713:

1. Pinnacle Bancshares, Inc., Thomson, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of McDuffie Bank & Trust, Thomson, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First National Security Company, DeQueen, Arkansas; to acquire an additional 2.5 percent, for a total of 34.7 percent of the voting shares of First National Bancshares of Hempstead, County, Inc., Hope, Arkansas, and thereby indirectly acquire First National Bank of Hope, Hope, Arkansas; Bank of Blevins, Blevins, Arkansas; and First National Bank of Lewisville, Lewisville, Arkansas.

Board of Governors of the Federal Reserve System, April 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9329 Filed 4–10–97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 May 8, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Citizens Banking Corporation, Flint, Michigan; to merge with CB Financial Corporation, Jackson, Michigan, and thereby indirectly acquire CB North, Charlevoix, Michigan; City Bank & Trust, Jackson, Michigan; and City Bank, Saint Johns, Michigan.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Warrensburg Bancshares, Inc., Warrensburg, Missouri, and thereby indirectly acquire Bank of Warrensburg, Warrensburg, Missouri.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Midstate Bancorp, Inc., Hinton, Oklahoma; to merge with Binger Agency, Inc., Binger, Oklahoma, and thereby indirectly acquire First Community Bank, Binger, Oklahoma.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Buffalo Bancorp, Inc., Buffalo, Texas, and Buffalo Corp., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Citizens State Bank, Buffalo, Texas.

Board of Governors of the Federal Reserve System, April 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9442 Filed 4–10–97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

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 25, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303-2713:

1. United Community Banks, Inc., Blairsville, Georgia; to acqure United Family Finance Co., Blairsville, Georgia, and thereby engage in credit insurance activities, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. The proposed activity will be conducted throughout the State of Georgia.

Board of Governors of the Federal Reserve System, April 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9331 Filed 4–10–97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

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 May 8, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303-2713:

1. P.C.B. Bancorp, Inc., Largo, Florida; to acquire Anchor Savings Bank, F.S.B., St. Petersburg, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed activities will be conducted throughout the State of Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation Inc., St. Louis, Missouri, and Ameribanc, Inc., St. Louis, Missouri; to acquire Roosevelt Bank, Chesterfield, Missouri, and Roosevelt Mortgage Company, Kansas City, Missouri, and thereby engage in the operation of a federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y; and in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 8, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9444 Filed 4–10–97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 16, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9516 Filed 4–9–97; 10:11 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[Dkt. C–3711]

American Honda Motor Co., Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a California-based automobile manufacturer from misrepresenting the total amount due at lease inception, requires the manufacturer to provide consumers with clear, readable, and understandable cost information in their car lease and financed purchase advertising, requires advertisements that reference an initial payment or state that no initial payment is due to clearly and conspicuously disclose, as applicable, that the deal is a lease, and to disclose the fact that an extra charge may be imposed at the end of the lease based on the residual value of the car.

DATES: Complaint and Order issued February 6, 1997.[1]

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S–4429, Washington, D.C. 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: On Thursday, December 5, 1996, there was published in the **Federal Register,** 61 FR 64524, a proposed consent agreement with analysis In the Matter of General Motors Corporation and American Honda Motor Co., Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*; 15 U.S.C. 1667–1667e; 12 CFR 226)

Donald S. Clark,

Secretary.

[FR Doc. 97–9364 Filed 4–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FEDERAL TRADE COMMISSION

[Dkt. C–3712]

American Isuzu Motors Inc., Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a California-based automobile manufacturer from misrepresenting the total amount due at lease inception, requires the manufacturer to provide consumers with clear, readable, and understandable cost information in their car lease and financed purchase advertising, requires advertisements that reference an initial payment or state that no initial payment is due to clearly and conspicuously disclose, as applicable, that the deal is a lease, and to disclose the fact that an extra charge may be imposed at the end of the lease based on the residual value of the car.

DATES: Complaint and Order issued February 6, 1997.[1]

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S–4429, Washington, D.C. 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: On Thursday, December 5, 1996, there was published in the **Federal Register**, 61 FR 64524, a proposed consent agreement with analysis In the Matter of General Motors Corporation and American Isuzu Motor Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.;* 15 U.S.C. 1667–1667e; 12 CFR 226)

[FR Doc. 97–9365 Filed 4–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FEDERAL TRADE COMMISSION

[Dkt. C–3715]

California Suncare, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a California-based company and its president from misrepresenting the safety, benefits, performance or efficacy of tanning products and UV exposure,

or any tests, studies or endorsements of their tanning products. The consent order requires the respondents to possess scientific evidence to substantiate such claims, and to send letters to distributors and retailers summarizing the Commission's action.

DATES: Complaint and Order issued February 11, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, D.C. 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: On Thursday, December 5, 1996, there was published in the **Federal Register,** 61 FR 64521, a proposed consent agreement with analysis In the Matter of California Suncare, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 97–9386 Filed 4–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FEDERAL TRADE COMMISSION

[Dkt. C–3710]

General Motors Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a Michigan-based automobile manufacturer from misrepresenting the total amount due at lease inception, requires the manufacturer to provide consumers with clear, readable, and understandable cost information in their car lease and financed purchase advertising, requires advertisements that reference an initial payment or state that no initial payment is due to clearly and conspicuously disclose, as applicable, that the deal is a lease, and to disclose the fact that an extra charge may be imposed at the end of the lease based on the residual value of the car. The consent order also prohibits the respondent from misrepresenting the existence or amount of any balloon payment or the annual percentage rate for advertised loans.

DATES: Complaint and Order issued February 6, 1997.[1]

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S–4429, Washington, D.C. 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: On Thursday, December 5, 1996, there was published in the **Federal Register**. 61 FR 64524, a proposed consent agreement with analysis In the Matter of General Motors Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comment having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional finding and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.;* 15 U.S.C. 1667–1667e; 12 CFR 226)

Donald S. Clark,

Secretary.

[FR Doc. 97–9367 Filed 4–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FEDERAL TRADE COMMISSION

[Dkt. C–3714]

Mazda Motors of America, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a California-based automobile manufacturer from misrepresenting the total amount due at lease inception, requires the manufacturer to provide consumers with clear, readable, and understandable cost information in their car lease and financed purchase advertising, requires advertisements that reference an initial payment or state that no initial payment is due to clearly and conspicuously disclose, as applicable, that the deal is a lease, and to disclose the fact that an extra charge may be imposed at the end of the lease based on the residual value of the car.

DATES: Complaint and Order issued February 6, 1997.[1]

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S–4429, Washington, D.C. 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: On Thursday, December 5, 1996, there was published in the **Federal Register,** 61 FR 64524, a proposed consent agreement with analysis In the Matter of General Motors Corporation and Mazda Motors of America, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No Comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*; 15 U.S.C. 1667–1667e; 12 CFR 226)

Donald S. Clark,

Secretary.

[FR Doc. 97–9368 Filed 4–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FEDERAL TRADE COMMISSION

[Dkt. C–3713]

Mitsubishi Motor Sales of America, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a California-based automobile

manufacturer from misrepresenting the total amount due at lease inception, requires the manufacturer to provide consumers with clear, readable, and understandable cost information in their car lease and financed purchase advertising, requires advertisements that reference an initial payment or state that no initial payment is due to clearly and conspicuously disclose, as applicable, that the deal is a lease, and to disclose the fact that an extra charge may be imposed at the end of the lease based on the residual value of the car. The consent order also prohibits the respondent from misrepresenting the existence or amount of any balloon payment or the annual percentage rate for the advertised loans.

DATES: Complaint and Order issued February 6, 1997.[1]

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S–4429, Washington, D.C. 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: On Thursday, December 5, 1996, there was published in the **Federal Register**, 61 FR 64524, a proposed consent agreement with analysis In the Matter of General Motors Corporation and Mitsubishi Motor Sales of America, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.;* 15 U.S.C. 1667–1667e; 12 CFR 226)

Donald S. Clark,

Secretary.

[FR Doc. 97–9369 Filed 4–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FEDERAL TRADE COMMISSION

[Docket No. C–3716]

Phaseout of America, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the New York-based firms to send a postcard to identifiable past purchasers of PhaseOut, a purported stop-smoking device, notifying them of the Commission's action. The order also requires the respondents to have scientific substantiation for claims that PhaseOut or any other smoking-cessation product reduces the amount of nicotine, tar, and carbon monoxide smokers receive. In addition, the consent order prohibits the respondents' misrepresentations concerning any test, study or endorsement.

DATES: Complaint and Order issued February 12, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Shira Modell, FTC/S–4002, Washington, DC 20580, (202) 326–3116.

SUPPLEMENTARY INFORMATION: On Thursday, December 5, 1996, there was published in the **Federal Register**, 61 FR 64526, a proposed consent agreement with analysis In the Matter of PhaseOut of America, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 97–9370 Filed 4–10–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 25]

Federal Travel Regulation; Promoting, Encouraging, and Facilitating the Use of Firesafe Accommodations

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs Federal agencies of responsibilities for complying with the Hotel and Motel Fire Safety Act of 1990, Pub. L. 101–391, 104 Stat. 747 (codified as amended in scattered sections of 15 U.S.C. and 5 U.S.C.), as amended by section 1614 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, 110 Stat. 2739, to save lives and protect property by promoting fire and life safety in hotels, motels, and all places of public accommodation affecting commerce.

EFFECTIVE DATE: This bulletin is effective March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Groat, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405; e-mail, jane.groat@gsa.gov; telephone (202) 501–1538.

SUPPLEMENTARY INFORMATION: Subsection 4(a) of Pub. L. No. 101–391, 104 Stat. 747 (codified at 5 U.S.C. 5707a), authorizes the Administrator of General Services, among other things, to take appropriate actions to encourage employees traveling on official business to stay at places of public accommodation that meet the requirements of fire prevention and control guidelines, and require, with limited exception, agencies to use ''approved accommodations'' for conferences. Section 5 of Pub. L. 101–391 required each agency to achieve an adequate ''approved accommodations percentage'' beginning in Fiscal Year 1995. Further, section 5 of the law required the Comptroller General of the United States to conduct an audit of the compliance of agencies with the established requirements and to submit a report to Congress describing the results of such audit. Section 1614 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201, 110 Stat. 2739) repealed the ''approved accommodations'' data collection and reporting requirement, as well as the requirement for the Comptroller General to conduct an audit. The law did not, however, repeal the Hotel and Motel Fire Safety Act provisions that authorize the Administrator of General Services to encourage employees traveling on official business to lodge at ''approved accommodations'' or require, with limited exception, agencies to use ''approved accommodations'' for conferences.

Dated: March 31, 1997.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

Attachment

March 31, 1997.

[GSA Bulletin FTR 25]

To: Heads of Federal agencies.

Subject: Promoting, Encouraging, and Facilitating the Use of Firesafe Accommodations.

1. Purpose

This bulletin informs agencies that pursuant to the Federal Travel Regulation (FTR) (41 CFR 301–304) each agency is responsible for influencing its employees who require commercial lodging when performing official travel to stay at an approved firesafe accommodation. Further, Federal employees traveling on official business, and pre-employment interviewees, are strongly encouraged to stay at an approved accommodation as defined in FTR § 301–17.2(c).

2. Background

a. The Hotel and Motel Fire Safety Act of 1990, Pub. L. No. 101–391, 104 stat. 747 (codified as amended in scattered sections of 15 U.S.C. and 5 U.S.C.) (the Act) requires the development and issuance of guidelines, and sets standards, concerning the use and installation of automatic sprinkler systems and smoke detectors in places of public accommodation affecting commerce.

b. In September 1994, the General Services Administration (GSA) issued FTR Amendment 39 (59 FR 46192, Sept. 7, 1994) instructing agencies, among other things, to ensure that each agency achieve an adequate ''approved accommodations percentage'' as specified in the Act, and reflected in the FTR, to enhance the safety of Federal employees traveling on official business. An ''approved accommodations percentage'' is the percentage of nights that an agency's employees traveling on official business spend in approved accommodations, i.e., any place of public accommodation that meets the requirements of the fire prevention and control guidelines in 15 U.S.C. 2225, relative to the total number of nights spent in places of public accommodation.

c. Section 1614 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 104–201, 110 Stat. 2739, repealed the ''approved accommodations'' data collection and employee reporting requirement imposed by the Act.

d. In December 1996, GSA issued FTR Amendment 53 (61 FR 64997, Dec. 10, 1996) to eliminate the ''approved accommodations'' data collection and reporting requirement.

e. GSA is issuing the guidelines contained in this bulletin to inform agencies that although the data collection and reporting requirement was repealed, the provisions that encourage agencies to promote the use of ''approved accommodations'' or require, with limited exception, the use of ''approved accommodations'' for conferences were not repealed. Agencies, therefore, should continue to effectuate policies strongly encouraging employees to use ''approved accommodations''.

3. Hotel and Motel Fire Safety Guidelines

The Act sets standards for fire prevention and control in places of public accommodation affecting commerce. These requirements include installation of hard-wired, single station smoke detectors in each guest room of each place of public accommodation, and an automatic sprinkler system in each place of public accommodation that is more than three stories. The Act further requires each State to submit to the Director of the Federal Emergency Management Agency (FEMA) a list of places of public accommodation in the State that comply with the Act's fire safety standards. From the State lists, FEMA must compile and publish in the **Federal Register** a national master list and distribute it to each Federal agency. The Act requires FEMA to periodically update the master list based on information provided by the States, and to distribute the updated list to each agency. Any questions regarding the FEMA list may be directed to Mr. John Ottoson, United States Fire Administration, at (301) 447–1272. The list is available via the internet at http://www.usfa.fema.gov/hotel/hotelindex.

4. Federal Travel Program Compliance

It is the policy of the Federal Government to save lives and protect property by promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. The GSA's travel programs adhere to established fire safety guidelines and survey accommodations that meet fire safety standards when conducting surveys of lodging costs for the purpose of establishing locality per diem rates.

5. Federal Agency Compliance

a. Pursuant to FTR § 301–7.2(b)(2), it is the responsibility of each agency when authorizing travel to take appropriate measures to influence employees, and others who will procure commercial lodging in the performance of official travel, to stay at a firesafe approved accommodation.

b. Pursuant to FTR part 301–16, an agency may not sponsor or fund in whole or in part a conference at a place of public accommodation that is not an approved accommodation, unless a waiver is granted.

6. Other Fire Safety Responsibilities

a. Pursuant to FTR § 301–1.3(a)(2), employees are strongly encouraged to stay in an approved accommodation when commercial lodging is required.

b. Pursuant to FTR § 301–1.202(b)(6), an interviewee traveling to a pre-employment interview is strongly encouraged to stay at an approved accommodation when commercial lodging is required.

7. Expiration Date

This bulletin remains in effect until canceled or superseded.

8. For Further Information Contact

Jane E. Groat, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405; e-mail, jane.groat@gsa.gov; telephone (202) 501–1538.

[FR Doc. 97–9400 Filed 4–10–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Specific List for Categorization of Laboratory Test Systems, Assays, and Examinations by Complexity.

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice with comment period.

SUMMARY: Regulations codified at 42 CFR 493.17, implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578, require that the Secretary provide for the categorization of specific laboratory test systems, assays, and examinations by level of complexity. The criteria for such categorizations also are set forth in those regulations.

This Notice announces the addition of approximately 1,300 test systems, assays, and examinations that have been categorized and notified between June 7, 1996 and December 31, 1996. These categorizations were effective on the issue date of the notification letter sent to the manufacturer and are subject to the 30 day comment period for this Notice.

DATES: *Effective date:* All categorizations in this Notice were effective on the date of the test categorization notification letter sent to the manufacturer. Written comments on the tests initially categorized in this Notice will be considered if they are received at the address indicated below, by no later than 5 p.m. on May 12, 1997. CDC reserves the right to reevaluate and recategorize tests based on the comments received in response to this Notice.

ADDRESSES: Comments on the categorization of tests in this Notice should be addressed to CLIA Federal Register Notice, Centers for Disease Control and Prevention, Mail Stop F–11, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724.

Requests for test complexity categorization should be submitted to: Attention: Test Categorization/CLIA, Centers for Disease Control and Prevention, Mail Stop F–11, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724.

Requests for waiver status should be submitted to: Attention: Request for Waiver Status/CLIA, Centers for Disease Control and Prevention, Mail Stop F–11, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

We will not be accepting facsimile (fax) copies or comments by telephone.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Bakes-Martin, (770) 488–7655.

SUPPLEMENTARY INFORMATION: All requests for test categorization should be submitted to the CDC. CDC is reviewing submissions for test categorization concurrently with the FDA's review process for 510(k) clearance or Pre-Market Approval (PMA) clearance. In order to assure timely review by CDC, manufacturers are requested to submit the package insert and 510(k) number for the product to CDC when the product is submitted to the FDA. However, CDC will not be able to issue the test categorization until the FDA has finished its review process. CDC is currently issuing test categorization notification letters to manufacturers within one week of the FDA 510(k) or PMA clearance. Test categorizations are effective as of the date of notification to the applicant. The CDC will publish updates and revisions to the test categorization list periodically in the **Federal Register** with opportunity for comment. The CDC will also maintain an updated list of categorized tests electronically, available to the public via Internet. For further information regarding this capability, please call (770) 488–7655.

Comments and Responses

On July 8, 1996, a test list of approximately 2,400 additional test systems, assays, and examinations categorized by level of complexity was published in the **Federal Register** (61 FR 35736) with a 30 day comment period. CDC received no comment letters in regard to this Notice.

Analyte Clarification

Confusion has arisen over the nomenclature and related specialty/subspecialty of the analytes (2512) Helicobacter pylori in the specialty/subspecialty of Bacteriology and (2513) Helicobacter pylori Antibodies in the specialty/subspecialty of General Immunology. The analyte (2512) Helicobacter pylori is used with those test systems that detect urease production by the Helicobacter pylori organism in a tissue specimen which is considered a bacteriology procedure. The analyte (2513) Helicobacter pylori Antibodies is used for the detection of antibodies to Helicobacter pylori in serum which is considered an immunology procedure.

For better definition, and where appropriate, a new analyte, (0525) Anti-Proteinase (PR–3) Antibodies, has replaced the less specific analyte (0440) Anti-Neutrophil Cytoplasm Antibodies.

For accuracy, the analyte (4973) Protein C Resistance has been changed to (0526) Activated Protein C (APC) Resistance.

Dated: April 3, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

List of Previously Unpublished Categorizations

The test categorization scoring scheme was based on an assessment of the complexity of the operation of the test procedure and not on an evaluation of data documenting the procedure's performance over time. Therefore, the categorization of a test system, assay, or examination as moderate or high complexity should not be interpreted as an indication of the acceptability or unacceptability of the accuracy, precision, or overall performance of the procedure.

COMPLEXITY: MODERATE
SPECIALITY/SUBSPECIALITY: Bacteriology
ANALYTE: Aerobic &/or Anaerobic Organisms—unlimited sources (0412)

TEST SYSTEM ASSAY, EXAMINATION:

Becton Dickinson BACTEC 9050 (07809)
ANALYTE: Clostridium difficile (1022)

TEST SYSTEM ASSAY, EXAMINATION:

Meridian Diagnostics ImmunoCard Toxin A (dir. sample/vis) (40255)
Unipath Clearview C. DIFF A (64033)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Streptococcus, group A (from throat only) (5828)

TEST SYSTEM ASSAY, EXAMINATION:

CliniCare CliniStrip NOW Strep A (10386)
CliniCare CliniStrip Strep A (10385)
SPECIALITY/SUBSPECIALITY: Endocrinology
ANALYTE: Cortisol (1032)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Cortisol, Urine (direct procedure) (1033)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
ANALYTE: Estradiol (1605)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Follicle Stimulating Hormone (FSH) (1908)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade aca Star with aca plus Immunoassay System (13424)
bioMerieux Vitek VIDAS (07806)
ANALYTE: HCG Beta Serum, Quantitative—Extended Range (ER) (2566)

TEST SYSTEM, ASSAY, EXAMINATION:

Technicon Immuno 1 System (61042)
ANALYTE: HCG, Beta, Serum, Quantitative (2502)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Boehringer Mannheim Elecsys 2010 Analyzer (07810)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade aca Star with aca plus Immunoassay System (13424)
bioMerieux Vitek VIDAS (07806)
ANALYTE: HCG, Serum, Qualitative (2501)

TEST SYSTEM, ASSAY, EXAMINATION:

Biocircuits IOS (07745)
Bionike A/Q Pregnancy Test (07779)
CliniCare CliniStrip hCG Combo (10384)
Genzyme Contrast Strip hCG (22185)

Orion Diagnostica UniStep hCG II (46224)
ANALYTE: HCG, Total, Serum, Quantitative (2555)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Biocircuits IOS (07745)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
ANALYTE: HCG, Urine, Qualitative (non-waived procedures) (2503)

TEST SYSTEM, ASSAY, EXAMINATION:

TECO Diagnostics Monoclonal B-hCG Pregancy Test (Indirect) (61255)
ANALYTE: HCG, Urine, Quantitative (2534)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
ANALYTE: Luteinizing Hormone (LH) (3713)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade aca Star with aca plus Immunoassay System (13424)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Progesterone (4914)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
ANALYTE: Prolactin (4915)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade aca Star with aca plus Immunoassay System (13424)
bioMerieux Vitek VIDAS (07806)
ANALYTE: T Uptake (TU) (6156)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Elecsys 2010 Analyzer (07810)
Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Testosterone (6102)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Cirrus Diagnostics Immulite (10159)
Technicon Immuno 1 System (61042)
ANALYTE: Thyroid Stimulating Hormone (TSH) (6106)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Biocircuits IOS (07745)
Boehringer Mannheim Elecsys 2010 Analyzer (07810)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
CliniCare CliniStrip ThyroChek TSH (10387)
Dade aca Star with aca plus Immunoassay System (13424)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Thyroxine (T4) (6109)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Boehringer Mannheim Elecsys 2010 Analyzer (07810)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Thyroxine, Free (FT4) (6111)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Boehringer Mannheim Elecsys 2010 Analyzer (07810)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Du Pont ACA IV with aca plus Immunoassay System (13254)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Triiodothyronine (T3) (6119)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Boehringer Mannheim Elecsys 2010 Analyzer (07810)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Triiodothyronine Uptake (T3U) (TU) (6120)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
ANALYTE: Triiodothyronine, Free (FT3) (6121)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
TOSOH A1A–1200 (61040)
TOSOH A1A–1200DX (61154)
TOSOH A1A–600 (61039)
Technicon Immuno 1 System (61042)
SPECIALITY/SUBSPECIALITY: General Chemistry
ANALYTE: 5'Nucleotidase (0105)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Acid Phosphatase (0407)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Alanine Aminotransferase (ALT) (SGPT) (0404)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)

Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Albumin (0414)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Albumin, Urinary (0516)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Alkaline Phosphatase (ALP) (0416)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Alpha-Hydroxybutyrate Dehydrogenase (HBDH) (0419)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade aca Star (13423)
ANALYTE: Ammonia, Plasma/Serum (0427)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 570 Alliance (10359)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Amylase (0429)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Angiotensin Converting Enzyme (ACE) (0481)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Apolipoprotein A1 (0462)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Apolipoprotein B (0457)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Aspartate Aminotransferase (AST) (SGOT) (0405)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Beta-Hydroxybutyrate (0722)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Bilirubin, Direct (0704)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Bilirubin, Neonatal (0705)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Bilirubin, Total (0706)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Bilirubin, Urine (0738)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/ Chimera UA PERFECT (07780)
ANALYTE: Blood Gases with pH (0708)

TEST SYSTEM, ASSAY, EXAMINATION:

AVL Compact 3 (04680)
Chiron Diagnostics 170 (10342)
Chiron Diagnostics 178 (10343)
Chiron Diagnostics 238 (10344)
Chiron Diagnostics 248 (10345)
Chiron Diagnostics 278 (10348)
Chiron Diagnostics 280 (10349)
Chiron Diagnostics 288 (10350)
Chiron Diagnostics 348 System (10337)
Chiron Diagnostics 400 System (10338)
Chiron Diagnostics 840 (10369)
Chiron Diagnostics 845 (10370)
Chiron Diagnostics 850 (10371)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 860 (10373)
Chiron Diagnostics 865 (10374)
Instrumentation Laboratory IL Synthesis (28466)
Mallinckrodt Gem Premier Plus (40254)
ANALYTE: Calcium, Ionized (1004)

TEST SYSTEM, ASSAY, EXAMINATION:

AVL 9180 (04664)
Chiron Diagnostics 288 (10350)
Chiron Diagnostics 348 System (10337)
Chiron Diagnostics 400 System (10338)
Chiron Diagnostics 634 (10365)
Chiron Diagnostics 850 (10371)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 860 (10373)
Chiron Diagnostics 865 (10374)
Instrumentation Laboratory IL

Synthesis (28466)
Mallinckrodt Gem Premier Plus (40254)
ANALYTE: Calcium, Total (1005)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Carbon Dioxide, Total (CO2) (1003)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Chiron Diagnostics 664 FAST 4 (10368)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Cerebrospinal Fluid (CSF) Protein (1014)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Chloride (1018)

TEST SYSTEM, ASSAY, EXAMINATION:

AVL 9180 (04664)
Chiron Diagnostics 288 (10350)
Chiron Diagnostics 400 System (10338)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Chiron Diagnostics 644 (10366)
Chiron Diagnostics 664 FAST 4 (10368)
Chiron Diagnostics 850 (10371)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 860 (10373)
Chiron Diagnostics 865 (10374)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Instrumentation Laboratory IL Synthesis (28466)
ANALYTE: Cholesterol (1020)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Cholinesterase (1021)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Roche Cobas Mira (55044)
Roche Cobas Mira S (55045)
ANALYTE: Cholyglycine (Bile Acids) (1053)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Creatine Kinase (CK) (1034)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Creatine Kinase MB Fraction (CKMB) (1002)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Boehringer Mannheim Elecsys 2010 Analyzer (07810)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Vitek Systems Vidas (67038)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Creatinine (1035)

TEST SYSTEM, ASSAY, EXAMINATION:

Bayer DCA 2000+ Analyzer (07827)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Ferritin (1902)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade aca Star with aca plus Immunoassay System (13424)
Roche Cobas INTEGRA (55179)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Folate (Folic acid) (1907)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
TOSOH A1A–1200 (61040)
TOSOH A1A–1200DX (61154)
TOSOH A1A–600 (61039)
ANALYTE: Folate, Red Blood Cell (RBC Folate) (1930)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
ANALYTE: Fructosamine (1914)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Synchron CX 4 (07071)
Beckman Synchron CX 4 CE (07174)
Beckman Synchron CX 5 (07072)
Beckman Synchron CX 5 CE (07491)
Beckman Synchron CX 7 (07073)
ANALYTE: Gamma Glutamyl Transferase (GGT) (2201)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express

(10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Glucose (2203)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 400 System (10338)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Chiron Diagnostics 860 (10373)
Chiron Diagnostics 865 (10374)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Instrumentation Laboratory IL Synthesis (28466)
ANALYTE: Glucose, Urine (2225)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/ Chimera UA PERFECT (07780)
ANALYTE: Glucose-6-Phosphate Dehydrogenase (G–6-PDH) (2208)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Glycosylated Hemoglobin (Hgb A1C) (2204)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad DiaSTAT Analyzer (07817)
Chiron Diagnostics Model 765 Glycomat (10380)
Roche Cobas INTEGRA (55179)
Technicon OPERA Clinical Chemistry System (61161)
Technicon RA 1000 (61010)
Technicon RA 2000 (61011)
Technicon RA 500 (61012)
Technicon RA XT (61013)
ANALYTE: HDL Cholesterol (2550)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 704/ BM Direct HDL (07818)
Boehringer Mannheim Hitachi 717/ BM Direct HDL (07819)
Boehringer Mannheim Hitachi 717/ Genzyme N-geneous HDL (07812)
Boehringer Mannheim Hitachi 736/ Genzyme N-geneous HDL (07813)
Boehringer Mannheim Hitachi 747/ BM Direct HDL (07820)
Boehringer Mannheim Hitachi 747/ Genzyme N-geneous HDL (07814)
Boehringer Mannheim Hitachi 911/ BM Direct HDL (07821)
Boehringer Mannheim Hitachi 911/ Genzyme N-geneous HDL (07811)
Boehringer Mannheim Hitachi 914/ BM Direct HDL (07822)
Boehringer Mannheim Hitachi 917/ BM Direct HDL (07823)
Boehringer Mannheim Hitachi 917/ Genzyme N-geneous HDL (07815)
Chiron Diagnostics 550 Express (DMA One Shots) (10353)
Chiron Diagnostics 550 Express (MHS SPINPRO) (10355)
Chiron Diagnostics 550 Express (Ref Diag Magnetic HDL Sep) (10356)
Chiron Diagnostics 550 Express (Sigma ISOSPIN) (10357)
Chiron Diagnostics 550 Express (T-Am. Singles) (10358)
Chiron Diagnostics 570 Alliance (MHS SPINPRO) (10360)
Chiron Diagnostics 570 Alliance (Sigma ISOSPIN) (10361)
Chiron Diagnostics 580 Alliance (MHS SPINPRO) (10363)
Dade Analyst (13425)
Olympus AU 5200/Genzyme N-geneous HDL (46223)
Olympus AU 800/Genzyme N-geneous HDL (46222)
Roche Cobas FARA/Genzyme N-geneous HDL (55213)
Roche Cobas Mira/Genzyme N-geneous HDL (55212)
Technicon DAX 96/Genzyme N-geneous HDL (61259)
ANALYTE: Haptoglobin (2511)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman IMMAGE Immunochemistry System (07816)
Chiron Diagnostics 550 Express (10352)
ANALYTE: Hemoglobin A2 (2535)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics Model 765 Glycomat (10380)
ANALYTE: Hemoglobin Barts (2537)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad Variant/Alpha Thalassemia Short Program (07791)
ANALYTE: Hemoglobin Fractions (2544)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics Model 765 Glycomat (10380)
ANALYTE: Hemoglobin S (2536)

TEST SYSTEM, ASSAY, EXAMINATION:

SA Scientific SAS Sickle Cell Test (58420)
ANALYTE: Iron (2814)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Iron Binding Capacity, Unsat. (UIBC) no pretreat. (2823)

TEST SYSTEM, ASSAY, EXAMINATION:

Abbott Spectrum (04067)
Abbott Spectrum EPX (04068)
Abbott Spectrum Series II (04069)
Beckman Synchron CX 3 (07070)
Beckman Synchron CX 4 (07071)
Beckman Synchron CX 4 CE (07174)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (07072)
Beckman Synchron CX 5 CE (07491)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (07073)
Beckman Synchron CX 7 Delta (07764)
Chiron Diagnostics 550 Express (10352)
Ciba Corning 550 Express (10038)
Coulter Optichem 100 (10115)
Coulter Optichem 120 (10079)
Coulter Optichem 180 (10080)
Instrumentation Laboratory IL Monarch 1000 (28082)
Instrumentation Laboratory IL Monarch 2000 (28231)
Instrumentation Laboratory IL Monarch Plus (28083)
Olympus Reply (46089)
Technicon RA 1000 (61010)
Technicon RA 500 (61012)
Technicon RA XT (61013)
ANALYTE: Ketone, Urine (3404)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/ Chimera UA PERFECT (07780)
ANALYTE: LDL Cholesterol (3748)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (Genzyme immunosep tube) (10354)
ANALYTE: Lactate Dehydrogenase (LDH) (3701)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Lactate Dehydrogenase Heart Fraction (LDH–1) (3702)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade aca Star (13423)
ANALYTE: Lactate Dehydrogenase Liver Fraction (LLDH) (3703)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Lactic Acid (Lactate) (3704)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 860 (10373)
Chiron Diagnostics 865 (10374)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Lipase (3711)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Magnesium (4002)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Methemoglobin (4032)

TEST SYSTEM, ASSAY, EXAMINATION:

A–VOX Systems AVOXimeter 4000 (04678)
Chiron Diagnostics 845 (10370)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 865 (10374)
Instrumentation Laboratory IL Synthesis (28466)
ANALYTE: Microalbumin (4019)

TEST SYSTEM, ASSAY, EXAMINATION:

Bayer DCA 2000+ Analyzer (07827)
Chiron Diagnostics 550 Express (10352)
ANALYTE: Microprotein, CSF (4026)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Microprotein, Urine (4027)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Myoglobin (4023)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Roche Cobas INTEGRA (55179)
Technicon Immuno 1 System (61042)
ANALYTE: Nitrite, Urine (4318)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/Chimera UA PERFECT (07780)
ANALYTE: Osmolality, Serum (4602)

TEST SYSTEM, ASSAY, EXAMINATION:

Advanced Instruments Micro Osmometer Model 3300 (04671)
ANALYTE: Osmolality, Urine (4603)

TEST SYSTEM, ASSAY, EXAMINATION:

Advanced Instruments Micro Osmometer Model 3300 (04671)
ANALYTE: Oxyhemoglobin/Oxygen Saturation (4604)

TEST SYSTEM, ASSAY, EXAMINATION:

A-VOX Systems AVOXimeter 4000 (04678)
Chiron Diagnostics 2500 CO-oximeter (10346)
Chiron Diagnostics 270 CO-oximeter (10347)
Chiron Diagnostics 845 (10370)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 865 (10374)
Instrumentation Laboratory IL Synthesis (28466)
ANALYTE: Phenylalanine (4942)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad RADIAS System (07493)
ANALYTE: Phosphorus (4906)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Potassium (4910)

TEST SYSTEM, ASSAY, EXAMINATION:

AVL 9180 (04664)
Chiron Diagnostics 288 (10350)
Chiron Diagnostics 348 System (10337)
Chiron Diagnostics 400 System (10338)
Chiron Diagnostics 480 (10351)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Chiron Diagnostics 614 (10364)
Chiron Diagnostics 644 (10366)
Chiron Diagnostics 654 (10367)
Chiron Diagnostics 664 FAST 4 (10368)
Chiron Diagnostics 850 (10371)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 860 (10373)
Chiron Diagnostics 865 (10374)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Instrumentation Laboratory IL Synthesis (28466)
Mallinckrodt Gem Premier Plus (40254)
Medica EasyStat Na/K/Li Analyzer (40256)
ANALYTE: Prealbumin (4911)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Prostatic Specific Antigen (PSA) (4919)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star with aca plus Immunoassay System (13424)

Du Pont ACA III with aca plus Immunoassay System (13253)
Du Pont ACA IV with aca plus Immunoassay System (13254)
Du Pont ACA Star with aca plus Immunoassay System (13358)
Du Pont ACA V with aca plus Immunoassay System (13255)
ANALYTE: Protein Fractions (4920)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Paragon CZE 2000 (07725)
ANALYTE: Protein, Total (4921)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Protein, Total (urine) (4972)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/ Chimera UA PERFECT (07780)
Boehringer Mannheim Hitachi 747/ STC AutoLite (07785)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Pseudocholinesterase (4923)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Reduced Hemoglobin (Deoxyhemoglobin) (5523)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 845 (10370)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 865 (10374)
Instrumentation Laboratory IL Synthesis (28466)
ANALYTE: Sodium (5805)

TEST SYSTEM, ASSAY, EXAMINATION:

AVL 9180 (04664)
Chiron Diagnostics 288 (10350)
Chiron Diagnostics 348 System (10337)
Chiron Diagnostics 400 System (10338)
Chiron Diagnostics 480 (10351)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Chiron Diagnostics 614 (10364)
Chiron Diagnostics 644 (10366)
Chiron Diagnostics 654 (10367)
Chiron Diagnostics 664 FAST 4 (10368)
Chiron Diagnostics 850 (10371)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 860 (10373)
Chiron Diagnostics 865 (10374)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Instrumentation Laboratory IL Synthesis (28466)
Mallinckrodt Gem Premier Plus (40254)
Medica EasyStat Na/K/Li Analyzer (40256)
ANALYTE: Sorbital Dehydrogenase (SDH) (5823)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Transferrin (6114)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman IMMAGE Immunochemistry System (07816)
Chiron Diagnostics 550 Express (10352)
ANALYTE: Triglyceride (6118)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Troponin T (Tn T) (6140)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Elecsys 2010 Analyzer (07810)
ANALYTE: Urea (BUN) (6403)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Uric Acid (6404)

TEST SYSTEM, ASSAY, EXAMINATION:

Abbott Bichromatic ABA 200 (04036)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Urobilinogen, Urine (6413)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/ Chimera UA PERFECT (07780)
ANALYTE: Vitamin B12 (6707)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
ANALYTE: pH, Urine (4978)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/ Chimera UA PERFECT (07780)
SPECIALITY/SUBSPECIALITY: General Immunology
ANALYTE: Allergen specific IgE (0417)

TEST SYSTEM, ASSAY, EXAMINATION:

Pharmacia UniCAP 100 (49164)
ANALYTE: Alpha-1-Antitrypsin (0421)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Beta-2 microglobulin (0703)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring Nephelometer (07273)
Behring Nephelometer 100 (07272)

Behring Nephelometer II (07563)
Dade aca Star (13423)
Roche Cobas Bio with DENS (automated data reduction) (55208)
Roche Cobas FARA (55040)
Roche Cobas Mira (55044)
ANALYTE: C-Reactive Protein (CRP) (1001)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman IMMAGE Immunochemistry System (07816)
Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: C1-Esterase Inhibitor (C1INH) (1051)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring Nephelometer (07273)
Behring Nephelometer 100 (07272)
Behring Nephelometer II (07563)
ANALYTE: CD4 positive Lymphocytes (1116)

TEST SYSTEM, ASSAY, EXAMINATION:

Coulter STKS (10093)
ANALYTE: CD8 positive Lymphocytes (1118)

TEST SYSTEM, ASSAY, EXAMINATION:

Coulter STKS (10093)
ANALYTE: Complement C3 (1029)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
ANALYTE: Complement C4 (1030)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
ANALYTE: Cytomegalovirus Antibodies (1039)

TEST SYSTEM, ASSAY, EXAMINATION:

Abbott AxSYM CMV IgG (04628)
Cirrus Diagnostics Immulite (10159)
Quest SeraQuest CMV IgG/Hyperion HyPrep Plus (auto. calc.) (52048)
Sienna Biotech Copalis One Immunoassay Sys/CMV Total Ab (58418)
Sienna Biotech Copalis One Immunoassay Sys/ToRC Total Ab (58415)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Helicobacter pylori Antibodies (2513)

TEST SYSTEM, ASSAY, EXAMINATION:

Abbott FlexPack HP Test (04673)
ANALYTE: Herpes simplex I and/or II Antibodies (2530)

TEST SYSTEM, ASSAY, EXAMINATION:

Cirrus Diagnostics Immulite (10159)
ANALYTE: Immunoglobulins—monoclonal/polyclonal (2802)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Paragon CZE 2000 (07725)
ANALYTE: Immunoglobulins IgA (2803)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade aca Star (13423)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
ANALYTE: Immunoglobulins IgE (2805)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Immunoglobulins IgG (2806)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade aca Star (13423)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
ANALYTE: Immunoglobulins IgM (2808)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade aca Star (13423)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
ANALYTE: Lyme Disease Antibodies (Borrelia burgdorferi Abs) (3714)

TEST SYSTEM, ASSAY, EXAMINATION:

Remel Rapidot Lyme Disease (B. burgdorferi IgG/IgM Abs) (55219)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Mumps Antibodies (4007)

TEST SYSTEM, ASSAY, EXAMINATION:

bioMerieux Vitek VIDAS (07806)
ANALYTE: Mycoplasma pneumoniae Antibodies (4016)

TEST SYSTEM, ASSAY, EXAMINATION:

Remel Mycoplasma pneumonia IgG/IgM (55214)
ANALYTE: Rheumatoid Factor (RF) (5508)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman IMMAGE Immunochemistry System (07816)
Randox Laboratories RF Latex Test (55209)
Roche Cobas INTEGRA (55179)
ANALYTE: Rubella Antibodies (5510)

TEST SYSTEM, ASSAY, EXAMINATION:

Abbott AxSYM Rubella IgG (04629)
Behring OPUS (07793)
Murex Rub-ex Latex Agglutination (40243)
Quest SeraQuest Rubella IgG/Hyperion HyPrep Plus (auto calc) (52039)
Sienna Biotech Copalis One Immunoassay Sys/Rubella Total Ab (58417)
Sienna Biotech Copalis One Immunoassay Sys/ToRC Total Ab (58415)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Rubeola Antibodies (measles) (5511)

TEST SYSTEM, ASSAY, EXAMINATION:

bioMerieux Vitek VIDAS (07806)
ANALYTE: Toxoplasma gondii Antibodies (6113)

TEST SYSTEM, ASSAY, EXAMINATION:

Abbott AxSYM Toxo IgG (04645)
Abbott AxSYM Toxo IgM (04640)
Behring OPUS (07793)
Quest SeraQuest Toxo IgG/Hyperion HyPrep Plus (auto calc) (52045)
Sienna Biotech Copalis One Immunoassay Sys/ToRC Total Ab (58415)
Sienna Biotech Copalis One Immunoassay Sys/Toxo Total Ab

(58416)
Technicon Immuno 1 System (61042)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Troponin-I (Cardiac) (6153)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
ANALYTE: Varicella-Zoster Virus Antibodies (6704)

TEST SYSTEM, ASSAY, EXAMINATION:

bioMerieux Vitek VIDAS (07806)
SPECIALITY/SUBSPECIALITY: Hematology
ANALYTE: Activated Clotting Time (ACT) (0461)

TEST SYSTEM, ASSAY, EXAMINATION:

International Technidyne Hemochron Jr. Low Range ACT (28464)
ANALYTE: Activated Partial Thromboplastin Time (APTT) (0409)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Instrumentation Laboratory IL ACL 6000 (28454)
Sigma Diagnostics Amelung AMAX CS–190 (auto dilution) (58413)
Sigma Diagnostics Amelung KC 1 A Coagulation Analyzer (58411)
Sigma Diagnostics Amelung KC 4 A Micro Coagulation Analyzer (58412)
ANALYTE: Antithrombin III (ATIII) (0456)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
Roche Cobas INTEGRA (55179)
ANALYTE: Fibrin Split Products (Fibrin Degradation) (1904)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Fibrinogen (1905)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Chiron Diagnostics 550 Express (10352)
Dade aca Star (13423)
Instrumentation Laboratory IL ACL 6000 (28454)
Sigma Diagnostics Amelung AMAX CS–190 (auto dilution) (58413)
Sigma Diagnostics Amelung AMAX CS–190 (manual dilution) (58414)
ANALYTE: Hematocrit (2514)

TEST SYSTEM, ASSAY, EXAMINATION:

Array Medical Ichor (04670)
Becton Dickinson QBC AUTOREAD System with QBC AccuTube (07784)
Chiron Diagnostics 348 System (10337)
Chiron Diagnostics 400 System (10338)
Coulter GEN–S System (10381)
Danam EXCELL 16 (13430)
Infolab EXCELL 16 (28457)
Instrumentation Laboratory IL Synthesis (28466)
Mallinckrodt Gem Premier Plus (40254)
Swelab Instrument AB AutoCounter (58402)
ANALYTE: Hemoglobin (2515)

TEST SYSTEM, ASSAY, EXAMINATION:

A-VOX Systems AVOXimeter 4000 (04678)
Array Medical Ichor (04670)
Becton Dickinson QBC AUTOREAD System with QBC AccuTube (07784)
Chiron Diagnostics 280 (10349)
Chiron Diagnostics 288 (10350)
Chiron Diagnostics 845 (10370)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 865 (10374)
Coulter GEN-S System (10381)
Danam EXCELL 16 (13430)
Infolab EXCELL 16 (28457)
Instrumentation Laboratory IL Synthesis (28466)
Swelab Instrument AB AutoCounter (58402)
Technicon opeRA (61161)
ANALYTE: Heparin (2518)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Plasminogen (4907)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Platelet Activated Clot Ratio (4977)

TEST SYSTEM, ASSAY, EXAMINATION:

HemoTec Hepcon/HMS (Platelet Function Test-PAF) (25260)
ANALYTE: Platelet Aggregation (4928)

TEST SYSTEM, ASSAY, EXAMINATION:

Chrono-log Whole Blood Aggregometer (10339)
ANALYTE: Platelet Count (4908)

TEST SYSTEM, ASSAY, EXAMINATION:

Array Medical Ichor (04670)
Becton Dickinson QBC AUTOREAD System with QBC AccuTube (07784)
Coulter GEN-S System (10381)
Danam EXCELL 16 (13430)
Infolab EXCELL 16 (28457)
Swelab Instrument AB AutoCounter (58402)
ANALYTE: Prothrombin Time (PT) (4922)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Instrumentation Laboratory IL ACL 6000 (28454)
Sigma Diagnostics Amelung AMAX CS–190 (auto dilution) (58413)
Sigma Diagnostics Amelung KC 1 A Coagulation Analyzer (58411)
Sigma Diagnostics Amelung KC 4 A Micro Coagulation Analyzer (58412)
ANALYTE: Red Blood Cell Count (Erythrocyte Count) (RBC) (5502)

TEST SYSTEM, ASSAY, EXAMINATION:

Array Medical Ichor (04670)
Coulter GEN-S System (10381)
Danam EXCELL 16 (13430)
Infolab EXCELL 16 (28457)
Swelab Instrument AB AutoCounter (58402)
ANALYTE: Reptilase Time (5521)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring Coagulation Timer (BCT) (07824)
Sigma Diagnostics Amelung AMAX CS–190 (auto dilution) (58413)
Sigma Diagnostics Amelung KC 4 A Micro Coagulation Analyzer (58412)
ANALYTE: Reticulocyte Count (5506)

TEST SYSTEM, ASSAY, EXAMINATION:

Coulter GEN-S System (10381)
IMI MICRO21 with Retic (28448)
ANALYTE: Thrombin Time (6105)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Sigma Diagnostics Amelung AMAX CS–190 (auto dilution) (58413)
Sigma Diagnostics Amelung KC 4 A Micro Coagulation Analyzer (58412)
ANALYTE: White Blood Cell Count (Leukocyte Count) (WBC) (7002)

TEST SYSTEM, ASSAY, EXAMINATION:

Array Medical Ichor (04670)
Becton Dickinson QBC AUTOREAD System with QBC AccuTube (07784)
Coulter GEN-S System (10381)
Danam EXCELL 16 (13430)
Infolab EXCELL 16 (28457)
Swelab Instrument AB AutoCounter (58402)
ANALYTE: White Blood Cell Differential (WBC Diff) (7001)

TEST SYSTEM, ASSAY, EXAMINATION:

Becton Dickinson QBC AUTOREAD System with QBC AccuTube (07784)
Coulter GEN-S System (10381)
Danam EXCELL 16 (13430)
IMI MICRO21 (no interpret. atypical/ immature cells) (28446)
Infolab EXCELL 16 (28457)
Swelab Instrument AB AutoCounter (58402)
SPECIALITY/SUBSPECIALITY: Toxicology / TDM
ANALYTE: Acetaminophen (0406)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Synchron CX 5 CE (07491)
Boehringer Mannheim Hitachi 737 (07165)
Boehringer Mannheim Hitachi 747 (07166)
Boehringer Mannheim Hitachi 911 (07377)
Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Du Pont Dimension (13086)
Du Pont Dimension AR (13087)
Du Pont Dimension ES (13215)
Du Pont Dimension XL (13355)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Technicon RA XT (61013)
ANALYTE: Amikacin (0425)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Amphetamines (0428)

TEST SYSTEM, ASSAY, EXAMINATION:

Applied Biotech SureStep Drug Screen AMP Test (04674)
Dade Dimension AR (13421)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Roche OnTrak TESTCUP Collection/ Urinalysis Panel (55146)
ANALYTE: Barbiturates (0701)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Ciba Corning 550 Express (10038)
Dade Dimension AR (13421)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Benzodiazepines (0702)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade Dimension AR (13421)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Cannabinoids (THC) (1009)

TEST SYSTEM, ASSAY, EXAMINATION:

Applied Biotech SureStep Drug Screen THC Test (04675)
Dade Dimension AR (13421)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
TCPI One-Step Urine DOA Cannabinoid (THC) (61258)
ANALYTE: Carbamazepine (1010)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Du Pont Dimension (13086)
Du Pont Dimension AR (13087)
Du Pont Dimension ES (13215)
Du Pont Dimension XL (13355)
ANALYTE: Carboxyhemoglobin (1012)

TEST SYSTEM, ASSAY, EXAMINATION:

A-VOX Systems AVOXimeter 4000 (04678)
Chiron Diagnostics 2500 CO-oximeter (10346)
Chiron Diagnostics 270 CO-oximeter (10347)
Chiron Diagnostics 845 (10370)
Chiron Diagnostics 855 (10372)
Chiron Diagnostics 865 (10374)
Instrumentation Laboratory IL Synthesis (28466)
ANALYTE: Cocaine Metabolites (1023)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade Dimension AR (13421)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Digitoxin (1303)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Digoxin (1304)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman IMMAGE Immunochemistry System (07816)
Behring OPUS (07793)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (DGN A) (13426)
Dade aca Star (manual pretreatment) (13427)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Ethanol (Alcohol) (1608)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Technicon AXON (61001)
ANALYTE: Ethosuximide (1609)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Gentamicin (2202)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Du Pont Dimension AR (13087)
Du Pont Dimension ES (13215)
Du Pont Dimension XL (13355)
ANALYTE: Lidocaine (3710)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Lithium (3712)

TEST SYSTEM, ASSAY, EXAMINATION:

AVL 9180 (04664)
Chiron Diagnostics 480 (10351)
Chiron Diagnostics 654 (10367)
Medica EasyStat Na/K/Li Analyzer (40256)
ANALYTE: Lysergic Acid Diethylamide (LSD) (3715)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717 (07163)
ANALYTE: Methadone (4003)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade Dimension AR (13421)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Methamphetamines (4004)

TEST SYSTEM, ASSAY, EXAMINATION:

Applied Biotech SureStep Drug Screen Methamphetamine Test (04669)
Chiron Diagnostics 550 Express (10352)
ANALYTE: Methotrexate (4006)

TEST SYSTEM, ASSAY,EXAMINATION:

Dade aca Star (13423)
ANALYTE: Morphine (4020)

TEST SYSTEM, ASSAY, EXAMINATION:

Applied Biotech SureStep Drug Screen MOR Test (04676)
ANALYTE: N-Acetylprocainamide (NAPA) (4301)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Chiron Diagnostics 550 Express (10352)
Dade aca Star (13423)
ANALYTE: Opiates (4601)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade Dimension AR (13421)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Phencyclidine (PCP) (4901)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade Dimension AR (13421)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Phenobarbital (4902)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Phenytoin (4903)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Primidone (4912)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Synchron CX 5 CE (07491)
Boehringer Mannheim Hitachi 737 (07165)
Boehringer Mannheim Hitachi 747 (07166)
Boehringer Mannheim Hitachi 911 (07377)
Dade aca Star (13423)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
ANALYTE: Procainamide (4913)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Synchron CX 5 CE (07491)
Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Boehringer Mannheim Hitachi 737 (07165)
Boehringer Mannheim Hitachi 747 (07166)
Boehringer Mannheim Hitachi 911 (07377)
Chiron Diagnostics 550 Express (10352)
Dade aca Star (13423)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Olympus AU 800 (46110)
Olympus Reply (46089)
ANALYTE: Quinidine (5202)

TEST SYSTEM, ASSAY, EXAMINATION:

Dade aca Star (13423)
ANALYTE: Salicylates (5801)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Theophylline (6104)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade Analyst (13425)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Tobramycin (6112)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Du Pont Dimension AR (13087)
Du Pont Dimension ES (13215)
Du Pont Dimension XL (13355)
ANALYTE: Tricyclic Antidepressants (6117)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Synchron CX 4 (07071)
Beckman Synchron CX 4 CE (07174)
Beckman Synchron CX 5 (07072)
Beckman Synchron CX 5 CE (07491)
Beckman Synchron CX 7 (07073)
Boehringer Mannheim Hitachi 717 (07163)
Boehringer Mannheim Hitachi 737 (07165)
Boehringer Mannheim Hitachi 747 (07166)
Boehringer Mannheim Hitachi 911 (07377)
Dade aca Star (13423)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Olympus AU 800 (46110)
Olympus Reply (46089)
Roche Cobas FARA (55040)
ANALYTE: Valproic Acid (6701)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 CE (07491)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)

Behring OPUS (07793)
Boehringer Mannheim Hitachi 737 (07165)
Boehringer Mannheim Hitachi 747 (07166)
Dade aca Star (13423)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Olympus AU 800 (46110)
Olympus Reply (46089)
ANALYTE: Vancomycin (6703)

TEST SYSTEM, ASSAY, EXAMINATION:

Behring OPUS (07793)
Behring OPUS Magnum (07794)
Behring OPUS Plus (07795)
Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
Du Pont Dimension (13086)
Du Pont Dimension AR (13087)
Du Pont Dimension ES (13215)
Du Pont Dimension XL (13355)
SPECIALITY/SUBSPECIALITY: Urinalysis
ANALYTE: Hemoglobin, Urine (2564)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/Chimera UA PERFECT (07780)
Boehringer Mannheim Hitachi 747 (STC Auto-Lyte) (07767)
Roche Cobas Bio (STC Auto-Lyte) (55200)
ANALYTE: Leukocyte Esterase, Urinary (3757)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Hitachi 717/Chimera UA PERFECT (07780)
Boehringer Mannheim Hitachi 747 (STC Auto-Lyte) (07767)
Roche Cobas Bio (STC Auto-Lyte) (55200)
ANALYTE: Total Solids (Specific Gravity) (6125)

TEST SYSTEM, ASSAY, EXAMINATION:

Beckman Synchron CX 4 CE/DRI Gravity-Detect (07802)
Beckman Synchron CX 4/DRI Gravity-Detect (07801)
Beckman Synchron CX 5 CE/DRI Gravity-Detect (07804)
Beckman Synchron CX 5/DRI Gravity-Detect (07803)
Beckman Synchron CX 7/DRI Gravity-Detect (07805)
Boehringer Mannheim Hitachi 704/DRI Gravity-Detect (07796)
Boehringer Mannheim Hitachi 717/Chimera UA PERFECT (07780)
Boehringer Mannheim Hitachi 717/DRI Gravity-Detect (07797)
Boehringer Mannheim Hitachi 737/DRI Gravity-Detect (07798)
Boehringer Mannheim Hitachi 747/DRI Gravity-Detect (07799)
Boehringer Mannheim Hitachi 911/DRI Gravity-Detect (07800)
Chiron Diagnostics 550 Express/DRI Gravity-Detect (10379)
Ciba Corning 550 Express/DRI Gravity-Detect (10335)
IRIS/BM 900UDx Urine Pathology System (28453)
Instrumentation Laboratory IL Monarch 1000/DRI Grav-Det (28455)
Instrumentation Laboratory IL Monarch 2000/DRI Grav-Det (28456)
Olympus AU 5000/DRI Gravity-Detect (46218)
Olympus AU 5200/DRI Gravity-Detect (46219)
Olympus AU 800/DRI Gravity-Detect (46220)
Olympus Reply/DRI Gravity-Detect (46221)
Roche Cobas FARA/DRI Gravity-Detect (55211)
Roche Cobas Mira/DRI Gravity-Detect (55210)
ANALYTE: Urinary Sediment Microscopic Elements (6405)

TEST SYSTEM, ASSAY, EXAMINATION:

IRIS/BM 900UDx Urine Pathology System (28453)
Sysmex UF-100 (58410)
ANALYTE: Urine Qualitative Dipstick Chemistries (6406)

TEST SYSTEM, ASSAY, EXAMINATION:

Bayer CLINITEK 50 Urine Chemistry Analyzer (07788)
IRIS/BM 900UDx Urine Pathology System (28453)
SPECIALITY/SUBSPECIALITY: Virology
ANALYTE: Rotavirus (5509)

TEST SYSTEM, ASSAY, EXAMINATION:

bioMerieux Vitek VIDAS (07806)
COMPLEXITY: HIGH
SPECIALITY/SUBSPECIALITY: Bacteriology
ANALYTE: Aerobic &/or Anaerobic Organisms-unlimited sources (0412)

TEST SYSTEM, ASSAY, EXAMINATION:

Becton Dickinson BBL CRYSTAL N/H ID Sys. (inc. culture) (07807)
ANALYTE: Chlamydia (1016)

TEST SYSTEM, ASSAY, EXAMINATION:

Vitek Systems VIDAS Chlamydia Blocking Assay (67102)
bioMerieux Vitek VIDAS (07806)
bioMerieux Vitek VIDAS Chlamydia Blocking Assay (07825)
ANALYTE: Staphylococcus (5807)

TEST SYSTEM, ASSAY, EXAMINATION:

Remel Staph Latex Kit (inc. culture) (55215)
SPECIALITY/SUBSPECIALITY: Endocrinology
ANALYTE: 25-Hydroxyvitamin D (25-OH-D) (0110)

TEST SYSTEM, ASSAY, EXAMINATION:

Incstar 25-Hydroxyvitamin D 125I RIA Kit (28374)
ANALYTE: Androstenedione (0460)

TEST SYSTEM, ASSAY, EXAMINATION:

Diagnostic Systems DSL–10–3800 ACTIVE Androstenedione EIA (13429)
ANALYTE: Catecholamines, Plasma (1056)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad CDM System/Bio-Rad HPLC (07792)
ANALYTE: Cortisol, Urine (extraction procedure) (1095)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics ACS 180 (10375)
Chiron Diagnostics ACS 180 Plus (10376)
Ciba Corning ACS 180 Plus (10336)
bioMerieux Vitek VIDAS (07806)
ANALYTE: Dehydroepiandrosterone Sulfate (DHEA-SO4) (1310)

TEST SYSTEM, ASSAY, EXAMINATION:

Diagnostic Systems DSL-C2700 DHEA-S–7 RIA (13433)
ANALYTE: Estriol-unconjugated (1607)

TEST SYSTEM, ASSAY, EXAMINATION:

Diagnostic Systems DSL–10–3700 ACTIVE Unconj. Estriol EIA (13434)
ANALYTE: Follicle Stimulating Hormone (FSH) (1908)

TEST SYSTEM, ASSAY, EXAMINATION:

Diagnostic Systems DSL–4700 ACTIVE FSH IRMA (13432)
ANALYTE: Gastrin (2205)

TEST SYSTEM, ASSAY, EXAMINATION:

Biosyn Gastrin EIA (07786)
ICN Gastrin EIA (28444)
ANALYTE: HCG, Total, Serum, Quantitative (2555)

TEST SYSTEM, ASSAY, EXAMINATION:

Diagnostic Systems DSL–10–8300 ACTIVE Intact hCG ELISA (13428)
ANALYTE: Homovanillic Acid (HVA) (2545)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad CDM System/Bio-Rad HPLC (07792)
ANALYTE: Insulin (2812)

TEST SYSTEM, ASSAY, EXAMINATION:

ALPCO Mercodia Insulin Enzyme Immunoassay (ELISA) (04679)
ANALYTE: Insulin-like Growth Factor-II (IGF-II) (2834)

TEST SYSTEM, ASSAY, EXAMINATION:

Diagnostic Systems DSL–9100 ACTIVE IGF-II IRMA (13431)
ANALYTE: Metanephrines, Urine (4025)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad CDM System/Bio-Rad HPLC (07792)
ANALYTE: Thyroxine (T4) (6109)

TEST SYSTEM, ASSAY, EXAMINATION:

United Biotech UBI MAGIWEL T4 (Thyroxine) Quantitative (64034)
ANALYTE: Triiodothyronine (T3) (6119)

TEST SYSTEM, ASSAY, EXAMINATION:

United Biotech UBI MAGIWEL T3 (Triiodothyronine) Quant. (64035)
ANALYTE: Vanillylmandelic Acid (VMA) (6710)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad CDM System/Bio-Rad HPLC (07792)
SPECIALITY/SUBSPECIALITY: General Chemistry
ANALYTE: Alkaline Phosphatase (ALP) (0416)

TEST SYSTEM, ASSAY, EXAMINATION:

HiChem Alkaline Phosphatase Reagent Kit (manual) (25262)
ANALYTE: Alkaline Phosphatase Bone Specific (BAP) (0518)

TEST SYSTEM, ASSAY, EXAMINATION:

Hybritech Tandem-R Ostase (25170)
ANALYTE: Blood Gases with pH (0708)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 158 (10340)
Chiron Diagnostics 168 (10341)
ANALYTE: Creatine Kinase (CK) (1034)

TEST SYSTEM, ASSAY, EXAMINATION:

HiChem Creatine Kinase Reagent Kit (manual) (25263)
ANALYTE: Glycosylated Hemoglobin (Hgb A1C) (2204)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad MDMS (07781)
ANALYTE: HDL Cholesterol (2550)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Chiron Diagnostics 570 Alliance (10359)
Chiron Diagnostics 580 Alliance (10362)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Iron Binding Capacity (post saturation/separation) (2815)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
Dade Dimension AR (13421)
Dade Dimension ES (13420)
Dade Dimension RxL (13436)
Dade Dimension XL (13422)
Dade aca Star (13423)
ANALYTE: Lipoprotein Fractions (3720)

TEST SYSTEM, ASSAY, EXAMINATION:

Zaxis LFS Lipogel Assay Kit (79049)
ANALYTE: Oxalate (4605)

TEST SYSTEM, ASSAY, EXAMINATION:

Chiron Diagnostics 550 Express (10352)
ANALYTE: Phenylalanine (4942)

TEST SYSTEM, ASSAY, EXAMINATION:

Shield Diagnostics Quantase Phenylalanine (58425)
ANALYTE: Protein Fractions (4920)

TEST SYSTEM, ASSAY, EXAMINATION:

Sebia Hydragel 15/30 Protein (E) Kit (for HYDRASYS) (58393)
Sebia Hydragel IF//IF Penta (for HYDRASYS) (58399)
Sebia Hydragel IF/Double IF/IF Penta (manual) (58398)
ANALYTE: Retinol binding protein (5507)

TEST SYSTEM, ASSAY, EXAMINATION:

The Binding Site Human Retinol Binding Protein 'NL' NANORID (61253)
ANALYTE: Triglyceride (6118)

TEST SYSTEM, ASSAY, EXAMINATION:

Horizon Diagnostics Triglycerides-GPO Reagent (manual) (25167)
ANALYTE: Vitamin B6 (6718)

TEST SYSTEM, ASSAY, EXAMINATION:

ALPCO Vitamin B6 3H REA (04667)
SPECIALITY/SUBSPECIALITY: General Immunology
ANALYTE: Anti-Cardiolipin Antibodies (0434)

TEST SYSTEM, ASSAY, EXAMINATION:

ALPCO ORGenTec Anti-Cardiolipin (IgA) ELISA (04672)
ALPCO ORGenTec Anti-Cardiolipin (IgG/IgM) ELISA (04668)
Shield Diagnostics DIASTAT anti-Cardiolipin IgG/IgM (qual) (58422)
Shield Diagnostics DIASTAT anti-Cardiolipin IgG/IgM (quant) (58421)
ANALYTE: Anti-Centromere Antibodies (0487)

TEST SYSTEM, ASSAY, EXAMINATION:

Shield Diagnostics DIASTAT Anti-Centromere Kit (qual) (58423)
Shield Diagnostics DIASTAT Anti-Centromere Kit (semi-quant) (58312)
ANALYTE: Anti-DNA Antibodies (0435)

TEST SYSTEM, ASSAY, EXAMINATION:

TheraTest Laborat EL-ANA/6(ssDNA,dsDNA,Sm,RNP/Sm,SS-A,SS-B) (61235)
TheraTest Laboratories EL-ANA Profiles (anti-dsDNA) (61243)
TheraTest Laboratories EL-ANA Profiles (anti-ssDNA) (61242)
TheraTest Laboratories EL-ANA Profiles (anti-ssDNA, -dsDNA) (61239)
TheraTest Labs EL-ANA/7H(ssDNA,dsDNA,Sm,RNP/Sm,SSA,SSB,His) (61236)
TheraTest Labs EL-ANA/7S(ss&dsDNA,Sm,RNP/Sm,SSA,SSB,Scl-70) (61237)

TheraTest Labs EL-ANA/ 8(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl70,H) (61238)
ANALYTE: Anti-ENA Antibodies (0507)

TEST SYSTEM, ASSAY, EXAMINATION:

INOVA Diag QUANTALite ENA6 ELISA/Sm,RNP,SSA,SSB,Scl-70,Jo-1 (28465)
Immuno Concepts RELISA Sng Well/ RNP,Sm,SS-A,SS-B,Scl-70,Jo1 (28467)
ANALYTE: Anti-Glomerular Basement Membrane (GBM) Antibodies (0524)

TEST SYSTEM, ASSAY, EXAMINATION:

Shield Diagnostics DIASTAT anti-GBM (qual) (58427)
Shield Diagnostics DIASTAT anti-GBM (semi-quant) (58426)
ANALYTE: Anti-Histone Antibodies (0437)

TEST SYSTEM, ASSAY, EXAMINATION:

TheraTest Laboratories EL-ANA Profiles (anti-Histone) (61249)
TheraTest Labs EL-ANA/ 7H(ssDNA,dsDNA,Sm,RNP/ Sm,SSA,SSB,His) (61236)
TheraTest Labs EL-ANA/ 8(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl70,H) (61238)
ANALYTE: Anti-Jo-1 (0438)

TEST SYSTEM, ASSAY, EXAMINATION:

Immuno Concepts RELISA Jo-1 (28449)
TheraTest Laboratories EL-ANA Profiles (anti-Jo-1) (61250)
ANALYTE: Anti-Mitochondrial Antibodies (AMTA) (0439)

TEST SYSTEM, ASSAY, EXAMINATION:

The Binding Site Rat Liver, Kidney, Stomach IFA Kit (61254)
ANALYTE: Anti-Myeloperoxidase (MPO) Antibodies (0505)

TEST SYSTEM, ASSAY, EXAMINATION:

Wampole MPO IgG,A,M ELISA (70191)
ANALYTE: Anti-Neutrophil Cytoplasm Antibodies (0440)

TEST SYSTEM, ASSAY, EXAMINATION:

INOVA Diagnostics NOVA Lite ANCA (28463)
Scimedx Anti-Neutrophil Cytoplasmic Ab (ANCA) (IFA) (58419)
ANALYTE: Anti-Nuclear Antibodies (ANA) (0441)

TEST SYSTEM, ASSAY, EXAMINATION:

IMI MICRO21/Immuno Concepts Colorzyme ANA (28447)
The Binding Site Rat Liver, Kidney, Stomach IFA Kit (61254)
ANALYTE: Anti-Parietal Cell Antibodies (0442)

TEST SYSTEM, ASSAY, EXAMINATION:

The Binding Site Rat Liver, Kidney, Stomach IFA Kit (61254)
ANALYTE: Anti-Proteinase-3 (PR–3) Antibodies (0525)

TEST SYSTEM, ASSAY, EXAMINATION:

Shield Diagnostics DIASTAT Anti-PR3 (cANCA) (qual) (58424)
Shield Diagnostics DIASTAT Anti-PR3 (cANCA) (semi-quant) (58329)
Wampole PR–3 IgG,A,M ELISA (70190)
ANALYTE: Anti-RNP (Ribonucleoprotein) (0443)

TEST SYSTEM, ASSAY, EXAMINATION:

TheraTest Laboratories EL-ANA Profiles (anti-Sm, -RNP) (61240)
ANALYTE: Anti-RNP-Sm Antibodies (0502)

TEST SYSTEM, ASSAY, EXAMINATION:

Immuno Concepts RELISA Sm/RNP (28451)
TheraTest Laborat EL-ANA/ 6(ssDNA,dsDNA,Sm,RNP/Sm,SS-A,SS-B) (61235)
TheraTest Laboratories EL-ANA Profiles (anti-RNP/Sm) (61245)
TheraTest Labs EL-ANA/ 7H(ssDNA,dsDNA,Sm,RNP/ Sm,SSA,SSB,His) (61236)
TheraTest Labs EL-ANA/ 7S(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl-70) (61237)
TheraTest Labs EL-ANA/ 8(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl70,H) (61238)
ANALYTE: Anti-Ribosomal P Antibodies (0445)

TEST SYSTEM, ASSAY, EXAMINATION:

Immuno Probe Ribosomal P EIA Test (28441)
ANALYTE: Anti-SS–A/Ro (0446)

TEST SYSTEM, ASSAY, EXAMINATION:

Immuno Concepts RELISA SS–A/ Ro—SS–B/LA (28450)
TheraTest Laborat EL-ANA/ 6(ssDNA,dsDNA,Sm,RNP/Sm,SS-A,SS–B) (61235)
TheraTest Laboratories EL-ANA Profiles (anti-SS–A) (61246)
TheraTest Laboratories EL-ANA Profiles (anti-SS–A, –SS–B) (61241)
TheraTest Labs EL-ANA/ 7H(ssDNA,dsDNA,Sm,RNP/ Sm,SSA,SSB,His) (61236)
TheraTest Labs EL-ANA/ 7S(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl-70) (61237)
TheraTest Labs EL-ANA/ 8(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl70,H) (61238)
ANALYTE: Anti-SS-B/La (0447)

TEST SYSTEM, ASSAY, EXAMINATION:

Immuno Concepts RELISA SS–A/ Ro—SS–B/LA (28450)
TheraTest Laborat EL-ANA/ 6(ssDNA,dsDNA,Sm,RNP/Sm,SS–A,SS–B) (61235)
TheraTest Laboratories EL-ANA Profiles (anti-SS–A, –SS–B) (61241)
TheraTest Laboratories EL-ANA Profiles (anti-SS–B) (61247)
TheraTest Labs EL-ANA/ 7H(ssDNA,dsDNA,Sm,RNP/ Sm,SSA,SSB,His) (61236)
TheraTest Labs EL-ANA/ 7S(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl-70) (61237)
TheraTest Labs EL-ANA/ 8(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl70,H) (61238)
ANALYTE: Anti-Scl-70 (0448)

TEST SYSTEM, ASSAY, EXAMINATION:

Immuno Concepts RELISA Scl-70 (28452)
TheraTest Laboratories EL-ANA Profiles (anti-Scl-70) (61248)
TheraTest Labs EL-ANA/ 7S(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl-70) (61237)
TheraTest Labs EL-ANA/ 8(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl70,H) (61238)
ANALYTE: Anti-Sm (Smith) (0450)

TEST SYSTEM, ASSAY, EXAMINATION:

Immuno Concepts RELISA Sm/RNP (28451)
TheraTest Laborat EL-ANA/ 6(ssDNA,dsDNA,Sm,RNP/Sm,SS–A,SS–B) (61235)
TheraTest Laboratories EL-ANA Profiles (anti-Sm) (61244)
TheraTest Laboratories EL-ANA Profiles (anti-Sm, –RNP) (61240)
TheraTest Labs EL-ANA/ 7H(ssDNA,dsDNA,Sm,RNP/ Sm,SSA,SSB,His) (61236)
TheraTest Labs EL-ANA/ 7S(ss&dsDNA,Sm,RNP/ Sm,SSA,SSB,Scl-70) (61237)
TheraTest Labs EL-ANA/ 8(ss&dsDNA,Sm,RNP/

Sm,SSA,SSB,Scl70,H) (61238)
ANALYTE: Anti-Smooth Muscle Antibodies (ASMA) (0451)

TEST SYSTEM, ASSAY, EXAMINATION:

The Binding Site Rat Liver, Kidney, Stomach IFA Kit (61254)
ANALYTE: Anti-Thyroglobulin Antibodies (0453)

TEST SYSTEM, ASSAY, EXAMINATION:

IMMCO Diagnostics ImmuLisa Anti-Thyroglobulin (Tg) Ab ELISA (28443)
ANALYTE: Beta-2 microglobulin (0703)

TEST SYSTEM, ASSAY, EXAMINATION:

Roche Cobas Bio without DENS (manual data reduction) (55207)
ANALYTE: Cytomegalovirus Antibodies (1039)

TEST SYSTEM, ASSAY, EXAMINATION:

Incstar CMV IgG ''fast'' ELISA (28461)
Incstar CMV IgG ELISA (28460)
Incstar CMV IgM Capture ELISA (28462)
Quest SeraQuest CMV IgG (manual/qual.) (52046)
Quest SeraQuest CMV IgG/Hyperion HyPrep Plus (man. calc.) (52047)
ANALYTE: Entamoeba histolytica Antibodies (1601)

TEST SYSTEM, ASSAY, EXAMINATION:

Trend Scientific TREND Amebiasis (E. histolytica) (spectro) (61231)
Trend Scientific TREND Amebiasis (E. histolytica) (visual) (61232)
ANALYTE: Helicobacter pylori Antibodies (2513)

TEST SYSTEM, ASSAY, EXAMINATION:

elias usa Varelisa Helicobacter pyl. Abs (IgG) (16112)
ANALYTE: Herpes simplex I and/or II Antibodies (2530)

TEST SYSTEM, ASSAY, EXAMINATION:

Incstar HSV I/II IgG ''fast'' ELISA (28458)
Incstar HSV I/II IgG ELISA (28459)
ANALYTE: Lyme Disease Antibodies (Borrelia burgdorferi Abs) (3714)

TEST SYSTEM, ASSAY, EXAMINATION:

MarDx Lyme Disease (IgG) Marblot Strip Test System (40206)
MarDx Lyme Disease (IgM) Marblot Strip Test System (40210)
ANALYTE: Mumps Antibodies (4007)

TEST SYSTEM, ASSAY, EXAMINATION:

Zeus Mumps IgG ELISA (79051)
ANALYTE: Rheumatoid Factor (RF) (5508)

TEST SYSTEM, ASSAY, EXAMINATION:

Hemagen Rheumatoid Factor Kit (EIA) (25261)
Zeus Rheumatoid Factor (RF) IgM ELISA (79052)
ANALYTE: Rubella Antibodies (5510)

TEST SYSTEM, ASSAY, EXAMINATION:

Quest SeraQuest Rubella IgG (manual/qual.) (52040)
Quest SeraQuest Rubella IgG (manual/semi-quant.) (52041)
Quest SeraQuest Rubella IgG/Hyperion HyPrep Plus (man. calc) (52038)
ANALYTE: Thyroid Peroxidase Autoantibodies (TPO) (6135)

TEST SYSTEM, ASSAY, EXAMINATION:

IMMCO Diagnostics ImmuLisa Anti-Thyroid Peroxidase (TPO) Ab (28442)
ANALYTE: Toxoplasma gondii Antibodies (6113)

TEST SYSTEM, ASSAY, EXAMINATION:

Quest SeraQuest Toxo IgG (manual/qual.) (52042)
Quest SeraQuest Toxo IgG (manual/semi-quant.) (52043)
Quest SeraQuest Toxo IgG/Hyperion HyPrep Plus (man. calc.) (52044)
ANALYTE: Varicella-Zoster Virus Antibodies (6704)

TEST SYSTEM, ASSAY, EXAMINATION:

Zeus Varicella-Zoster IgG ELISA (79050)
SPECIALITY/SUBSPECIALITY: Hematology
ANALYTE: Alpha-2-Antiplasmin (0463)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Instrumentation Laboratory IL ACL 6000 (28454)
ANALYTE: Antithrombin III (ATIII) (0456)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Instrumentation Laboratory IL ACL 6000 (28454)
Sigma Diagnostics Amelung AMAX CS–190 (auto dilution) (58413)
Sigma Diagnostics Amelung AMAX CS–190 (manual dilution) (58414)
ANALYTE: Coagulation Factors (1044)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Instrumentation Laboratory IL ACL 6000 (28454)
Sigma Diagnostics Amelung AMAX CS–190 (auto dilution) (58413)
Sigma Diagnostics Amelung AMAX CS–190 (manual dilution) (58414)
Sigma Diagnostics Amelung KC 4 A Micro Coagulation Analyzer (58412)
ANALYTE: Fibrinogen (1905)

TEST SYSTEM, ASSAY, EXAMINATION:

Sigma Diagnostics Amelung KC 1 A Coagulation Analyzer (58411)
Sigma Diagnostics Amelung KC 4 A Micro Coagulation Analyzer (58412)
ANALYTE: Heparin (2518)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Instrumentation Laboratory IL ACL 6000 (28454)
ANALYTE: Heparin, Low Molecular Weight (LMWH) (2558)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
ANALYTE: Plasminogen (4907)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Instrumentation Laboratory IL ACL 6000 (28454)
ANALYTE: Plasminogen Activator Inhibitor (PAI) (4936)

TEST SYSTEM, ASSAY, EXAMINATION:

Biopool TintElize PAI–1 (07787)
ANALYTE: Platelet Activated Clot Ratio (4977)

TEST SYSTEM, ASSAY, EXAMINATION:

HemoTec Hepcon/HMS (Platelet

Function Test) (25243)
ANALYTE: Protein C (4929)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Behring Coagulation Timer (BCT) (07824)
Instrumentation Laboratory IL ACL 6000 (28454)
ANALYTE: Protein S (4930)

TEST SYSTEM, ASSAY, EXAMINATION:

American Bioproducts STA Compact Analyzer (04677)
Instrumentation Laboratory IL ACL 6000 (28454)
ANALYTE: White Blood Cell Differential (WBC Diff) (7001)

TEST SYSTEM, ASSAY, EXAMINATION:

IMI MICRO21 (with intrpret. atypical/immature cells) (28445)
SPECIALITY/SUBSPECIALITY: Mycobacteriology
ANALYTE: Mycobacteria (4024)

TEST SYSTEM, ASSAY, EXAMINATION:

Becton Dickinson BBL MGIT/Mycobacteria Growth Indicator (07808)
Organon Teknika MB/BacT Microbial Detection System (46215)
ANALYTE: Mycobacterium avium complex (4009)

TEST SYSTEM, ASSAY, EXAMINATION:

Remel MycoAKT Culture ID M. avium complex (inc. cult.) (55217)
ANALYTE: Mycobacterium kansasii (4014)

TEST SYSTEM, ASSAY, EXAMINATION:

Remel MycoAKT Culture ID M. kansasii (inc. cult.) (55218)
ANALYTE: Mycobacterium tuberculosis complex (4015)

TEST SYSTEM, ASSAY, EXAMINATION:

Remel MycoAKT Culture ID M. tuberculosis cplx (inc. cult.) (55216)
SPECIALITY/SUBSPECIALITY: Parasitology
ANALYTE: Cryptosporidium (1109)

TEST SYSTEM, ASSAY, EXAMINATION:

TechLab Crypto-Cel IF Test (61262)
TechLab Crypto/Giardia-Cel IF Test (61263)
Trend Scientific Crypto. parvum Dir Detect System (Spectro) (61252)
Trend Scientific Crypto. parvum Dir Detect System (Visual) (61251)
ANALYTE: Entamoeba histolytica (1631)

TEST SYSTEM, ASSAY, EXAMINATION:

TechLab E. histolytica Test (ELISA) (spectro) (61261)
TechLab E. histolytica Test (ELISA) (visual) (61260)
ANALYTE: Giardia lamblia (2222)

TEST SYSTEM, ASSAY, EXAMINATION:

TechLab Crypto/Giardia-Cel IF Test (61263)
SPECIALITY/SUBSPECIALITY: Toxicology / TDM
ANALYTE: Benzodiazepines (0702)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad CDM System/Bio-Rad HPLC (07792)
ANALYTE: Tricyclic Antidepressants (6117)

TEST SYSTEM, ASSAY, EXAMINATION:

Bio-Rad CDM System/Bio-Rad HPLC (07792)
SPECIALITY/SUBSPECIALITY: Virology
ANALYTE: Cytomegalovirus (1038)

TEST SYSTEM, ASSAY, EXAMINATION:

Du Pont Alliance CMV-Direct EA IFA (including cell culture) (13386)
Light Diag. CMV Direct IFA (including cell culture) (37100)
ANALYTE: Herpes simplex (2529)

TEST SYSTEM, ASSAY, EXAMINATION:

Diagnostic Hybrids ELVIS HSV GOLD (inc. cell culture) (13435)
ANALYTE: Influenza A (2828)

TEST SYSTEM, ASSAY, EXAMINATION:

ZymeTx ViraZyme Culture Confirm. Screen (inc. cell culture) (79047)
ANALYTE: Influenza B (2829)

TEST SYSTEM, ASSAY, EXAMINATION:

ZymeTx ViraZyme Culture Confirm. Screen (inc. cell culture) (79047)
ANALYTE: Parainfluenza 1 (4959)

TEST SYSTEM, ASSAY, EXAMINATION:

ZymeTx ViraZyme Culture Confirm. Screen (inc. cell culture) (79047)
ANALYTE: Parainfluenza 2 (4960)

TEST SYSTEM, ASSAY, EXAMINATION:

ZymeTx ViraZyme Culture Confirm. Screen (inc. cell culture) (79047)
ANALYTE: Parainfluenza 3 (4961)

TEST SYSTEM, ASSAY, EXAMINATION:

ZymeTx ViraZyme Culture Confirm. Screen (inc. cell culture) (79047)
ANALYTE: Parainfluenza 4 (4975)

TEST SYSTEM, ASSAY, EXAMINATION:

ZymeTx ViraZyme Culture Confirm. Screen (inc. cell culture) (79047)
ANALYTE: Respiratory syncytial virus (5503)

TEST SYSTEM, ASSAY, EXAMINATION:

bioMerieux Vitek VIDAS (07806)
COMPLEXITY: WAIVED
SPECIALITY/SUBSPECIALITY: Endocrinology
ANALYTE: Ovulation Test (LH) by Visual Color Comparison (9461)

TEST SYSTEM, ASSAY, EXAMINATION:

Vanguard Biomedical MiniClinic Ovulation Predictor (67100)
ANALYTE: Urine HCG by Visual Color Comparison Tests (9642)

TEST SYSTEM, ASSAY, EXAMINATION:

Bionike A/Q Pregnancy Test (07779)
Chembio Sure Check Pregnancy Test (10334)
CliniCare CliniStrip Urine Only Pregnancy (10383)
CliniCare CliniStrip hCG Combo (10384)
CliniCare CliniStrip hCG Pregnancy (10382)
Genzyme Contrast Strip hCG (22185)
Orion Diagnostica UniStep hCG II (46224)
Vanguard Biomedical MiniStick Pregnancy Test (67101)
SPECIALITY/SUBSPECIALITY: General Chemistry
ANALYTE: Glucose Monitoring Devices (FDA Cleared/Home Use) (9221)

TEST SYSTEM, ASSAY, EXAMINATION:

Boehringer Mannheim Accu-Chek Instant (07789)
Boehringer Mannheim Accu-Chek Instant DM (07783)
Boehringer Mannheim Accu-Chek InstantPlus (07782)
Chematics CHEMCARD Glucose Test (10266)
LXN Blood Glucose Testing System (37107)
MediSense ExacTech RSG Blood Glucose System (40257)
SPECIALITY/SUBSPECIALITY: General Immunology

ANALYTE: Helicobacter pylori Antibodies (2513)

TEST SYSTEM, ASSAY, EXAMINATION:

Quidel QuickVue One-Step H. pylori Test for Whole Blood (52037)

SPECIALITY/SUBSPECIALITY: Urinalysis

ANALYTE: Urine Dipstick or Tablet Analytes, nonautomated (9641)

TEST SYSTEM, ASSAY, EXAMINATION:

Bayer CHEK-STIX U.T.I. Test Strips (07790)

Genesis Labs DIA SCREEN 10 Way Reagent Strips: Urinalysis (22182)

TCPI URI-TEST Glucose in Urine (61256)

TCPI URI-TEST Nitrite in Urine (61257)

[FR Doc. 97–9350 Filed 4–10–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Procedures for Requests To Use Child Care and Development Fund for Construction or Major Renovation of Child Care Facilities.

OMB No: New Collection.

Description; The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) allows tribal grantees to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests. Respondents will be CCDF tribal grantees requesting to use the CCDF funds for construction or major renovation.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction and renovation collection	100	1	20	2,000

Estimated Total Annual Burden Hours: 2,000.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 7, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–9396 Filed 4–10–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 97M–0136]

Thoratec Laboratories Corp.; Premarket Approval of Thoratec® Ventricular Assist Device System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Thoratec Laboratories Corp., Berkeley, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Thoratec® Ventricular Assist Device System. After reviewing the recommendation of the Circulatory Systems Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 20, 1995, of the approval of the application.

DATES: Petitions for administrative review by May 12, 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: Dina A. Justice, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8262.

SUPPLEMENTARY INFORMATION: On June 26, 1992, Thoratec Laboratories Corp., Berkeley, CA 94710, submitted to CDRH an application for premarket approval of Thoratec® Ventricular Assist Device System. The device is a ventricular assist device and is intended as a bridge to cardiac transplantation for use in patients suffering from end-stage heart failure. The patient should meet all of the following criteria: (1) Candidate for cardiac transplantation, (2) imminent risk of dying before donor heart procurement, and (3) dependence on, or incomplete response to, continued vasopressor support.

On December 5, 1994, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the

application. On December 20, 1995, 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 the 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 12, 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 17, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–9432 Filed 4–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid, EPSDT, Maternal and Child Health; *Form No.:* HCFA–416; *Use:* States are required to submit annual EPSDT program reports to HCFA pursuant to Section 1902(a) (43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs, to develop trend patterns and projections nationally, and respond to inquiries. Respondents are State Medicaid agencies; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,568.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 2, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–9356 Filed 4–10–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Special Project Grants; Traumatic Brain Injury Demonstration Grants

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice; correction.

SUMMARY: The Health Resources and Services Administration published a document in the **Federal Register** of March 27, 1997, concerning Special Project Grants; Traumatic Brain Injury Demonstration Grants. The document contained an incorrect phone number for the Division of Maternal, Infant, Child and Adolescent Health (DMICAH).

Correction

In the **Federal Register** issue of Thursday, March 27, 1997 (62 FR 14684), in FR Doc. 97–7727, on page 14685 in the second column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information from MCHB should be directed to the Division of Maternal, Infant, Child and Adolescent Health (DMICAH), Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. The DMICAH telephone number for TBI inquiries is 301–443–5599.

The rest of the notice remains the same.

Dated: April 7, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–9337 Filed 4–10–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1997:

Name: Council on Graduate Medical Education

Date and Time: May 14, 1997, 12:30 p.m.–5:00 p.m., May 15, 1997, 8:30 a.m.–2:00 p.m.

Place: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting is open to the Public.

Agenda: The agenda will include three panel discussions: Medical Education and Physician Competencies for a New Environment; Physician Workforce Projections and Issues; and Physician Geographic Distribution and the Provider Safety Net.

There will be presentations, on Informatics, Training, and Practice for a New Age; the New York Medicare GME Demonstration Project; and the IOM Study of GME Trust Fund Implementation. Action will be taken on the Minorities in Medicine Report.

Anyone requiring information regarding the subject should contact F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: April 7, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–9338 Filed 4–10–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4142–N–33]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not total-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has received for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency (Area—MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–1191; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; TRANSPORTATION: Mr. Philip Rockmaker, Department of Transportation, Acting Principal, Space Management, SVC–140, Transportation Administrative Service Center, 400 7th Street, SW., Room 2310, Washington,

DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: April 4, 1997.

Jacquie M. Lawing,

General Deputy Assistant Secretary.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 04/11/97

Suitable/Available Properties

Land (by State)

Colorado

Cotter Transfer Site
White Water Co: Mesa CO 81527–
Landholding Agency: GSA
Property Number: 549630006
Status: Excess
Comment: 109.63 acres, portion may be in floodplain, most recent use — train, truck transfer.
GSA Number: 7–B–CO–626.

Maryland

46.725 acres
Naval Air Warfare Center
Willows Road
Lexington Park Co: St. Mary's MD
Landholding Agency: Navy
Property Number: 779710067
Status: Unutilized
Comment: Buffer area within Accident Potential Zone 2, no utilities, use and access restrictions.

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 524A
USCG ISC Kodiak
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 879710004
Status: Excess
Reason: Floodway, Secured Area.

Florida

Bldg. 897, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189710044
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 895, Eglin AFB
Eglin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189710045
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Bldg. 660, SUBASE Pearl
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779710068
Status: Excess
Reason: Extensive deterioration.

Bldg. 1249
Halsey Terrace Housing, PWC
Pearl Harbor Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779710069
Status: Excess
Reason: Extensive deterioration.

Bldg. 2297
Maloelap Housing, PWC
Pearl Harbor Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779710070
Status: Excess
Reason: Extensive deterioration.

Idaho

ARA 626
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419710003
Status: Excess
Reason: Secured Area.

CF645
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419710004
Status: Excess
Reason: Secured Area.

CF657/CF716
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419710005
Status: Excess
Reason: Secured Area.

CPP631
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419710006
Status: Excess
Reason: Secured Area.

CPP709
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419710007
Status: Excess
Reason: Secured Area.

CPP734
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419710008
Status: Excess
Reason: Secured Area.

TAN620/TAN656
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419710009
Status: Excess
Reason: Secured Area, Extensive deterioration.

TRA–645
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419710010
Status: Excess
Reason: Secured Area.

[FR Doc. 97–9156 Filed 4–10–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–07–1120–00: GP7–0150]

Notice of meetings of Southeast Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is given that there will be meetings of the Southeast Oregon Resource Advisory Council.

DATES: The Southeast Oregon Resource Advisory Council meetings will begin at 8 a.m. and run to 5 p.m., April 28, 1997. Public comments are scheduled from 7 p.m. to 7:30 p.m., April 28, 1997. On April 29, 1997, the meeting will run from 8 a.m. to 12 noon.

ADDRESSES: The Southeast Oregon Resource Advisory Council meetings will take place at the Fremont National Forest Headquarters, 5214 North ''G'' St., Lakeview, Oregon and at the Interagency Fire Center, 200 North ''E'' Street, Lakeview, Oregon.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918 (telephone 541–473–3144).

Lynn P. Findley,

ADM Operations/Field Support.

[FR Doc. 97–9310 Filed 4–10–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1020–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice of meeting.

SUMMARY: The Miles City District Resource Advisory Council will have a meeting Wednesday, April 30, 1997 at 10:00 a.m. at the Forsyth Country Club just west of Forsyth, Montana.

Topics of discussion at the meeting will be an update of the off-highway vehicle/block management plan document, the PILT (payment-in-lieu-of-taxes) program, and fire management. The meeting is expected to last until 4:00 p.m.

The meeting is open to the public and the public comment period is set for 1:00 p.m. The public may make oral statements before the Council or file

written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City District, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 232–4331.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: April 2, 1997.

Glenn A. Carpenter,

District Manager.

[FR Doc. 97–9358 Filed 4–10–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(CA–010–07–1430–01: CA 124, S 157, S 800, S 5682, SAC 056771, & SAC 079371)

Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Nevada, Tuolumne, Yuba, Calaveras, & Placer County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—Recreation and Public Purposes (R&PP) Act Classification; Nevada, Tuolumne, Yuba, Calaveras, & Placer County, California

SUMMARY: The following public lands in Nevada County, California have been examined and found suitable for classification for conveyance to the Nevada County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Nevada County Board of Supervisors currently leases the following lands for transfer stations.

Mount Diablo Meridian, California

T. 17 N., R. 7 E.,
Sec. 24, E½NE¼NW¼NW¼; (Birchville).
T. 17 N., R. 8 E.,
Sec. 5, lot 11. (North San Juan).

Containing 45.92 acres, more or less.

The following public lands in Tuolumne County, California have been examined and found suitable for classification for conveyance to the Tuolumne County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Tuolumne County Board of Supervisors currently leases the following lands for a landfill.

Mount Diablo Meridian, California

T. 1 S., R. 16 E.,
Sec. 33, lots 3, 5, & 6. (Groveland).

Containing 116.14 acres, more or less.

The following public lands in Yuba County, California have been examined and found suitable for classification for conveyance to the Yuba County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Yuba County Board of Supervisors currently leases the following lands for a transfer station.

Mount Diablo Meridian, California

T. 19 N., R. 6 E.,
Sec. 34 NE¼NW¼. (Ponderosa).

Containing 40 acres, more or less.

The following public lands in Calaveras County, California have been examined and found suitable for classification for conveyance to the Calaveras County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Calaveras County Board of Supervisors currently leases the following lands for a transfer station.

Mount Diablo Meridian, California

T. 6 N., R. 13 E.,
Sec. 14 NW¼SW¼SW¼. (Wilseyville).

Containing 10 acres, more or less.

The following public lands in Placer County, California have been examined and found suitable for classification for conveyance to the Placer County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Placer County Board of Supervisors currently leases the following lands for a transfer station.

Mount Diablo Meridian, California

T. 13 N., R. 10 E.,
Sec. 3, lot 19. (Foresthill).

Containing 37.36 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with the current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. An easement for streets, roads, and utilities in accordance with the transportation plan for each County.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, California.

Upon publication of this notice in the **Federal Register,** the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsome CA 95630.

Classification Comments

Interested parties may submit comments involving the suitability of the lands. Comments on the classification are restricted to whether the land is physically suited to the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land.

Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, BLM Folsom Resource Area Office, (916) 985–4474.

D.K. Swickard,

Area Manager.

[FR Doc. 97–9230 Filed 4–10–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for reapproval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting Dennis C. Jones at (303) 231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below, and to the OMB Paperwork Reduction Project (1010–0094), Washington, D.C. 20503, telephone (202) 395–7340.

Dates: Written comments should be received on or before May 12, 1997.

Title: Requests for Royalty Refunds and Credits.

OMB Approval Number: 1010–0094.

Abstract: The Minerals Management Service (MMS) Royalty Management Program (RMP) is proposing to continue collecting certain information from royalty payors on Outer Continental Shelf (OCS) leases. Many lease holders have in the past requested refunds or credits of excess royalty payments made under OCS leases subject to Section 10 of the Outer Continental Shelf Lands Act. This information indicates the information required from lease holders requesting royalty refunds or credits from Section 10 leases for payments made before August 13, 1996.

Bureau Form Numbers: Not applicable.

Frequency: As submitted by lessee.

Description of Respondents: Royalty payors on Federal and Indian mineral leases.

Estimated Completion Time: 2 hours.

Annual Responses: 500 responses.

Annual Burden Hours: 1,000 hours.

Bureau Clearance Officer: Carol A. deWitt, (703) 787–1242.

Dated: March 18, 1997.

Lucy R. Querques,

Associate Director for Royalty Management.

[FR Doc. 97–9391 Filed 4–10–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Innovative Employment and Training Opportunities for People With Disabilities

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: All information required to submit a grant application by eligible applicants in contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of funds for locally administered demonstration projects with innovative employment and training opportunities for people with disabilities that suffered long-term unemployment or who have been dislocated from recent employment. The program will be jointly funded by Job Training Partnership Act (JTPA) Title IV, Research and Demonstration, and Title III, National Reserve Funds. This notice describes the process that eligible entities must use to apply for demonstration funds, how grantees are to be selected, and the responsibilities of grantees. The Department anticipates awarding three (3) to five (5) grants, not to exceed $500,000 per grant, or a total of $1.5 million. Applications that exceed $500,000 will not be considered. Awards will be made on a competitive basis. The duration of grants will be for eighteen (18) months.

DATES: The closing date for receipt of proposals is *May 12, 1997*, at 2:00 p.m. (Eastern Daylight Time).

ADDRESSES: Applications shall be mailed to: Division of Acquisition and Assistance, Attention: Reda Harrison, Reference: SGA/DAA 97–104, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Reda Harrison, Division of Acquisition and Assistance, Telephone: (202) 219–8694 (This is not to toll-free number). This solicitation will also be published on the Internet at ''http://www.doleta.gov.''

SUPPLEMENTARY INFORMATION: U.S. Department of Labor, Employment and Training Administration is soliciting proposals on a competitive basis to conduct local demonstration projects utilizing advanced technological systems and/or other innovative approaches to provide employment opportunities for individuals with severe disabilities. This announcement consists of three parts. Part I describes the procedures for eligible applicants who wish to apply for grant funds. Part II provides the Government's Requirement/Statement of Work. Part III describes the selection process/criteria for award.

Part I. Application Process

A. Eligibility

1. Eligible Applicants—

Entities eligible to apply for grants under this announcement are nonprofit organizations who are currently administering local programs using advanced technology systems and/or other innovative approaches in providing services to the disabled; and can document the following:

(1) Extensive knowledge and experience regarding issues of concern to individuals with disabilities;

(2) expertise in working with individuals with disabilities;

(3) the ability to conduct training, provide services, and conduct follow-up;

(4) inclusion and advancement of people with disabilities within the organization; and

(5) management structure necessary to ensure the integrity of funds requested (by meeting the standard for financial management and participant data systems as outlined in 20 CFR 627.425).

Only one (1) proposal per applicant/organization is permitted.

Entities described in Section 501(c)(4) of the Internal Revenue Code who engage in lobbying activities are not eligible to receive funds under this SGA. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, which became effective on January 1, 1996, prohibits the award of federal funds to these entities if they engage in lobbying activities. Applicants shall indicate their IRS status on the Standard Form 424.

2. Eligible Participants

Participants in these projects must be individuals aged 18 to 64 who have a disability as defined in the implementing regulations for the

Americans with Disabilities Act (ADA) at 29 CFR, Part 1630.2 and meet the eligibility criteria for dislocated workers at Section 301(a) of the JTPA.

B. Period of Performance

The Period of Performance will be eighteen (18) months from date of execution.

C. Option To Extend

Based on the availability of funds and project performance and the needs of the Department, grants may be extended for an additional one or two year(s) of operation.

D. Page Limitation

Applicants' technical proposal shall be limited to 25 double-spaced, single-side pages with 1-inch margins. Appendices shall not exceed ten (10) pages (except for 10 pages of assessment tools described in Part II.B(3)(c). Text type shall be at least 10 point or larger. Applications that do not meet these requirements will not be considered.

E. Submission of Proposal

A proposal shall consist of two (2) separate and distinct parts: Part I, the Financial Proposal; and Part II, the Technical Proposal.

Part I, the Financial Proposal, shall contain the SF–424, ''Application for Federal Assistance'' (Appendix A) and ''Budget Information Sheet'' (Appendix B). Applicant shall indicate on the SF–424 the organization's IRS status. The Federal Domestic Assistance Catalog number is 17.246.

The budget shall include on separate pages detailed breakouts of each proposed budget line item, including detailed administrative costs, and analysis of cost. Grant funds cannot be used to provide training that would be provided in the absence of the requested grant. Grant funds cannot be used to provide salaries for program participants. Grant funds cannot be used for acquisition of production equipment.

Part II shall contain a Technical Proposal that demonstrates the grant applicant's capabilities in accordance with the Statement of Work in Part II of this solicitation. No costs data or reference to costs shall be included in the Technical Proposal.

F. Hand Delivered Proposals

Proposals may be mailed or delivered by hand. A mailed proposal should be mailed no later than five (5) calendar days prior to the closing date for the receipt of applications. Hand-delivered grant applications must be received at the designated place by 2:00 p.m. (Eastern Time) by May 12, 1997. All overnight mail shall be considered to be hand-delivered and must be received at the designated place by the specified time on the closing date. Grant applications transmitted by electronic mail, telegraph, or fax will not be considered.

G. Late Proposals

A proposal received at the office designated in the Solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);

(2) Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The term ''post-mark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date, or the application shall be processed as though it had been mailed late. ''Post-mark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next-Day Service—Post Office to Addressee is the date entered by the post office receiving clerk on the Express Mail Next Day Service-Post Office to Addressee label and the postmarks on both the envelope or wrapper and the original receipt from the U.S. Postal Service. (''Postmark'' has the same meaning given in the prior paragraph.) Therefore, a grant applicant should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

H. Withdrawal of Proposals

A grant application may be withdrawn by written notice or telegram (including mailgram) received at any time before the awarding of a grant based on that application. An application may be withdrawn in person by the grant applicant, or by an authorized representative of the grant applicant if the representative's identity is made known and the representative signs a receipt for the proposal.

Part II. Government Requirement/ Statement of Work

A. Purpose

The purpose of this solicitation is to explore and demonstrate how advanced technological systems and/or other innovative approaches may provide employment opportunities for individuals with disabilities.

The proposal may demonstrate approaches for addressing the multi-disciplinary needs of individuals with severe disabilities, novel approaches to assure retention and career advancement of individuals with disabilities. The proposal may also demonstrate employment related abilities within the context of ''disability,'' workplace technology development, rehabilitative engineering, or systemic employment redesign that enhances training, employment, retention and promotional opportunities for individuals with disabilities.

B. Project Summary

Each grant application shall follow the format outlined below:

1. Target Population

Project proposals must be directed to individuals with disabilities, including physical, emotional, mental or other severe functional impairments in accordance with the definition of disability under the ADA who also meet definition for dislocated under JTPA. Projects should also target subgroups of those with disabilities such as those suffering recent dislocation, requiring retraining, and recipients of Supplemental Security Insurance or Social Security Disability Insurance. A full description of how target population will be recruited, assurance of disability for those served, and design of the project relative to specific disabilities.

2. Available Jobs

Describe the jobs that will be available to project participants upon completion of training and placement services,

probable salary levels, the potential for advancement, career path or field, and the information on which such descriptions are based. If specific jobs are not identifiable, provide the labor market information that ensures the availability of suitable jobs for participants, wage levels, career potential and opportunities for advancement. Include information about the number and type of jobs and the insufficiency of qualified workers to fill those positions in the absence of the proposed project. Identify sources of information.

3. Project Design

Project design should identify innovative approaches to enhancing the employability of people with disabilities, describe the specific purpose(s) of the proposed project, and how the project will address the needs of a specific disability. Of particular interest will be projects that explore advance technologies in the employment of people with disabilities, methods for improving employability and retention of individuals, interventions relative to employment, workplace reengineering and technological redesign, and entrepreneurial approaches to employment of people with disabilities.

Describe the major project components listed below, where applicable:

(a) Outreach and recruitment. Describe how people with disabilities will be identified and recruited for participation in the project. Recruitment efforts may address public service communications and announcements, use of media, coordination with the JTPA Service Delivery Area, Vocational Rehabilitation Agency, Independent Living Centers, community based organizations and other service groups. Describe the applicant's experience in reaching the target population.

(b) Eligibility and selection criteria. Describe the criteria and process to be used in determining eligibility and selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Explain how the selection criteria relate to the specific purpose of the proposed project.

(c) Services to be provided. Describe any services to be provided from the time of selection of participants through placement. Describe process for post-placement services and follow-up of participants for six months following job placement. The descriptions shall provide a clear understanding of the services and support that will be necessary for participants to be placed successfully in jobs and to retain those jobs, including services not funded under the grant, and ways to address participants' financial needs during periods of training. Identify necessary support areas and interagency coordination efforts that may be required in terms of transportation to work or housing, if applicable. Grant-funded activities may include any activities listed at Sections 314 (c), (d) and (e) of JTPA and should, at a minimum, including assessment, retraining, job placement, and supportive services.

Identify any assessment tools proposed to be used before or after services are provided, and include samples of tools designed for use in the proposed project (samples shall be limited to 10 Pages in addition to the page limitation of the technical proposal and appendices). Assessment should be designed to facilitate evaluation of the project in terms of specific planned outcomes.

Describe how training will be customized to account for transferable skills, previous education, and particular circumstances of the target population. This description should include any participant groupings and training methods based on particular characteristics of the target group. Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services through other providers.

Describe the limitations and eligibility criteria for needs-related payments and relocation assistance, if applicable.

(d) Relationship to prior experience. Demonstrate the applicant's prior experience in working with people with disabilities, and how that experience affects or influences the design of the proposed project. Provide details on experience in employment, training, vocational rehabilitation, job placement, and evaluation techniques. Demonstrate how people with disabilities have been integral to, or consulted with, in the project design, administration, and evaluation.

4. Planned Outcomes

Provide the following planned performance information for the project:

(a) planned number of participants;

(b) planned number of program completions;

(c) planned number of placements in unsubsidized employment (number of participants placed in jobs related to the training or services funded by the grant within 60 days after completion of preplacement services);

(e) planned average wage at placement;

(f) planned number of individuals placed and average wage of individuals still employed at six month follow-up;

(g) planned participant services satisfaction rate (number of participants who, 60 days and six months after completion of program services, rate program services as ''very helpful'' or ''extremely helpful'' when other allowable ratings are ''not at all helpful'' and ''somewhat helpful,'' divided by the number of participants).

5. Evaluation

Describe how an evaluation will be conducted to determine successful and unsuccessful methods and strategies tested by the project. Describe the use of the planned outcome and program performance data to evaluate the impacts of the project. Address how this evaluation may be used for replication of successful outcomes. The project evaluation will be a final deliverable for the project.

6. Coordination

Describe the nature and extent of coordination between the applicant and other entities in the design and implementation of the proposed project. Include services to be provided through resources other than grant funds under this demonstration. Of particular interest to ETA is the coordination efforts in recruitment and placement to achieve a more holistic approach to the individual requirements of the participant with a disability. Coordination efforts may include strategies for addressing transportation needs, housing, job coaching, or natural supports that leverage services provided through Vocational Rehabilitation or other support systems. DOL encourages the establishment of advisory groups to provide guidance and to support coordination.

With reference to the sources and amounts of project funds and in-kind contributions identified in the financial proposal as being other than those requested under the grant applied for, describe the basis for valuation of those funds and contributions. Provide evidence that ensures the coordination described.

Documentation of consultation and commitment for the project concept

from applicable labor organizations must be submitted when 20 percent or more of the targeted worker population is represented by one or more labor organizations, or where the training is for jobs where a labor organization represents a substantial number of workers engaged in similar work.

7. Innovation

Describe any innovation in the proposed project, including but not limited to innovations in concept to be tested, services, delivery of services, training methods, job development, or job retention strategies. Explain how the proposed project adopts or fosters a holistic approach to circumstances faced by the disabled. Explain how the proposed project is similar to the applicant's prior and current activities.

8. Project Management

(a) Structure. Describe the management structure for the project, including a staffing plan that describes each position and the percentage of its time to be assigned to this project. Provide an organizational chart showing the relationship among project management and operational components, including those at multiple sites of the project.

(b) Program Integrity. Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements. Explain the basis for the applicant's administrative authority over the management and operational components. Describe how information will be collected to:

(1) determine the achievement of project outcomes as indicated in section 4 of this part; and

(2) report on participants, outcomes, and expenditures.

(c) Monitoring.

(1) Establishment of project implementation and progress benchmarks. Describe how the project will keep records of its activities as required at 29 CFR Parts 95 and 20 CFR 631.63, as appropriate, including benchmarks to indicate the planned implementation of the project that will provide:

a. A quarterly implementation schedule of participant activity and quarterly cumulative expenditure projections; and

b. start-up implementation events for each month that are necessary to achieve a fully operational project status (assume accomplishments by the end of the month specified).

(2) Describe how a participant's continuing participation in the project will be monitored.

(3) Identify the information project performance that will be collected on a short-term basis (weekly, monthly, etc.) by program managers for internal project management to determine whether the project is accomplishing its objectives as planned and whether project adjustments are necessary.

Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided throughout the project. The description shall identify the types of information to be obtained, the methods and frequency of data collection, and ways in which information will be used in implementing and managing the project. Grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information. Technical assistance in the design and implementation of customer satisfaction data collection and analysis may be provided by DOL.

(d) Grievance procedures. Briefly describe the grievance procedures to be used consistent with the requirements of the JTPA Regulations at 20 CFR 631.64.

(e) Previous project management experience. Provide an objective demonstration of the grant applicant's ability to manage the project based on the applicant's past experience in the management of grant-funded projects similar to that being proposed including financial management.

C. Reporting Requirements

Awardee will be required to submit quarterly and final financial and program reports. Detailed requirements for submitting these reports will be included in the grant award document.

Part III. Selection/Evaluation Criteria

Selection of grantees for award is to be made after careful evaluation of grant applications by a panel selected for that purpose by DOL. Panel results shall be advisory in nature and not binding on the Grant Officer. panelists shall evaluate applications for acceptability based upon overall responsiveness to the Statement of Work, with emphasis on the factors enumerated below.

1. Target Population (15 Points)

The description of the characteristics of the target group is clear and meaningful, and sufficiently detailed to determine the potential participant's service needs. Documentation is provided showing that a significant number of dislocated workers who possess these characteristics is available for participation in the project area. Sufficient information is provided to explain how the number of dislocated workers to be enrolled in the project was determined. The recruitment plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project. The target population's characteristics and circumstances are likely to appear nationally.

2. Service Plan (20 Points)

The scope of services to be provided is consistent with the specific purpose of the proposed project. The scope of services to be provided is adequate to meet the needs of the target population given: (1) their characteristics and circumstances, (2) the jobs in which they are to be placed, and (3) the length of program participation planned prior to placement. The proposal demonstrates the applicant's ability to effectively assess participants' needs, using a holistic approach, and to effect the delivery of services to meet those needs.

3. Management Pplan (20 Points)

The applicant has successfully managed grants in the past. The applicant has experience working with individuals with disabilities. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned performance and expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated. The proposal provides for a satisfactory grievance process.

Review by appropriate labor organizations, where applicable is documented. The proposal includes a method of assessing customer satisfaction and taking into account the results of such assessment in the operation of the project.

4. Cost (10 Points)

Proposed costs are reasonable in relation to the characteristics and circumstances of the target group, the services to be provided, the management plan, and coordination with other entities. The impact of innovation on costs is explained clearly in the proposal and is reasonable.

5. Coordination (15 Points)

The proposal includes coordination with other programs and entities for project design or provisions of services. Such coordination contributes to a holistic approach to identifying and addressing the needs of individuals in

the target population. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose of the proposed project.

6. Innovation (20 Points)

The proposal demonstrates innovation in the concept(s) to be tested, the projects design, and/or the services to be provided. The project includes reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration purpose and goals and the specific purpose of the proposed project.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). Such award would be based on the applicant's proposal without alteration. The applicant's signature on the SF–424 constitutes a binding offer.

Award Announcements: Winners under this competition will be published on the Internet at ''http://www.doleta.gov''.

Signed at Washington, DC, this 4th day April, 1997.

Janice E. Perry,

Grant Officer, Employment and Training Administration.

Appendices

1. Appendix A—''Application for Federal Assistance'' (Standard Form 424)
2. Appendix B—''Budget Information Sheet''

BILLING CODE 4510–30–M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:
Application ☐ Construction ☐ Non-Construction
Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, State and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 97–9189 Filed 4–10–97; 8:45 am]

BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Microenterprise Grants Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: All the information needed to submit a proposal by eligible applicants is included in this announcement. The U.S. Department of Labor, Employment and Training Administration (DOL/ETA), announces the availability of funds to implement and enhance community based microenterprise activities. Microenterprise activities are authorized under Title IV, Part I of the Job Training Partnership Act. This program will be funded by the Job Training Partnership Act. Section 324 of the Job Training Partnership Act authorizes the use of funds reserved under Title III, Part B, for demonstration programs of up to three years in length, including programs dealing with self-employment opportunity. The grants will provide training, technical assistance and support to microenterprise owners or potential owners. It is anticipated that approximately $1.4 Million will be disbursed. Up to six (6) awards will be made in the range of $225,000 to $300,000 per grant. Applications that exceed $300,000 will not be considered. Awards will be made on a competitive basis. The duration of the Grants will be for fifteen (15) months with a one (1) year option. A 100 percent match is required for this program. In addition, no funds under this program shall be used for investment in revolving loan activities. This notice includes the detailed Government requirement and the process that eligible applicants must use to apply for these funds.

DATES: The closing date for receipt of applications shall be *May 12, 1997,* at 2:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the Division of Acquisition and Assistance, Attention: Denise Roach, Reference: SGA/DAA 97–012, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Denise Roach at (202) 219–8694. (This is not a toll free number). This solicitation will also be announced on the Internet at ''http//www.doleta.gov''

SUPPLEMENTARY INFORMATION: U.S. Department of Labor, Employment and Training Administration is soliciting proposals on a competitive basis for the conduct of projects to implement and enhance community based microenterprise activities. The intent of these grants will be to develop the capacity to provide effective business-related training to persons developing a microenterprise, and provide technical assistance and support to owners or potential owners of a microenterprise. This announcement consists of three parts. Part I discusses the procedures for eligible applicants who wish to apply for these funds. Part II provides the detailed Government's Requirement/Statement of Work/Reporting Requirements. Part III describes the selection process/criteria for award.

Part I. Application Process

A. Eligible Applicants

Awards under this Solicitation will be made to States. For the purpose of this Solicitation, the term ''State'' includes, in addition to those entities contained in the definition in Section 4(22) of JTPA:

—Grantees designated under subsection (c) or (d) of subsection 401 to provide services to Indian Reservations or Alaska Native Villages, or a consortium of such grantees and the State; and

—Grantees designated under section 402(c) to provide services to migrant seasonal farmworkers, or a consortium of such grantees and the State.

An application shall be submitted by the Governor or, in the instance of a grantee designated under section 401 and 402, by the grantee. In the instance of a consortium between the State and section 401 and 402 grantees, the application shall be accompanied by a letter from the Governor ratifying such an arrangement and specifying the agency primarily responsible for the conduct of the project.

When the Governor submits an application on behalf of the State, he or she shall designate the agency that shall be responsible for conducting the project. No more than two applications may be submitted per eligible applicant. A state may specify a political subdivision (county, city, town, township, parish village etc.) or economic division such as a Service Delivery Area, an Enterprise Community or an Empowerment Zone as the focus of training activity in its proposal.

States currently administering a grant under the previous competition held under this authority will be eligible to apply for an award under this Solicitation; provided, a completely new approach to microenterprise activities is taken from that being conducted under their current grant. Proposals submitted by those current grantees will be subject to pre-screening to assure that they propose an approach that is clearly innovative and different from the activity that was implemented under the previous award. Current grantees shall include as apart of their application, a one (1) page description of how proposed project differs from current project.

Entities described in Section 501(c)(4) of the Internal Revenue Code who engage in lobbying activities are not eligible to receive funds under this SGA. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 State. 691, which became effective January 1, 1996, prohibits the award of federal funds to these entities if they engage in lobbying activities. Applicants shall include their IRS Status on Standard Form 424.

B. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts.

Part I shall contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix No. 1) and ''Budget Information Sheet'' (Appendix No. 2). Also, the budget shall include on a separate Page(s) a detailed enumeration of how the matching requirement will be fulfilled. The individual signing the SF 424 on behalf of the State shall represent the responsible financial and administrative entity for the grant should that application result in an award.

Part II shall contain a technical proposal that demonstrates the offeror's capabilities in accordance with the Statement of Work contain in this announcement. The technical proposal should be limited to 25 pages in length of single spaced text. Appendices shall not exceed ten (10) pages. Current grantees shall include as a part of their technical proposal, a One (1) Page description of the current and proposed projects and how the proposed activities and/or approach differs from those currently being provided. No cost data or reference to price shall be included in the technical proposal. In order to assist offerors in the preparation of their proposals and to facilitate the expeditious evaluation by the review panel, proposals should be organized and presented in the same sequential

order as the Rating Criteria in Part III of this announcement.

C. Hand Delivered Proposals

Proposals must be mailed at least five (5) days prior to the closing date. However, if proposals are hand delivered, they must be received at the designated place by 2:00 p.m., Eastern Time by *May 12, 1997.* All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

Proposals received at the Office designated in the Solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g. an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);

(2) Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The term ''post marked'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

F. Period of Performance

The Period of Performance will be fifteen (15) months from the date of execution.

G. Option To Extend

Based on the availability of funds, effective program operation and the needs of the Department, the grant(s) may be extended for one (1) additional year.

H. Definitions

(1) *Microenterprise* means a commercial enterprise with five (5) or fewer employees, one (1) or more of whom owns the enterprise; and each of the owners of the enterprise is economically disadvantaged, as defined in Section 4(8) of JTPA.

(2) *States* for the purposes of this solicitation also includes those grantees described under Part I.A. ''Eligible Applicant.''

(3) For the purpose of this solicitation, *eligible participants* shall be economically disadvantaged persons who are dislocated workers as defined by Section 301(a) of JTPA. This can include long-term unemployed who ''have limited opportunities for employment or reemployment in the same or similar occupations'' and the self-employed who are ''unemployed as a result of general economic conditions in the community in which they reside or because of national disasters''. Applicants may refer to the JTPA regulation at 20 CFR 631.3(e) for further guidance on self-employed in the process of going out of business. The applicant shall describe the process by which it will identify individuals eligible for assistance under this program.

I. Matching Requirement

No State shall receive an award under this solicitation unless the State agrees to provide non-Federal contributions in an amount equal to 100 percent of Federal funds provided to carry out the microenterprise program.

Part II—Government's Requirement/ Statement of Work/Reporting Requirements

Section 499 of JTPA requires that the Secretary of Labor make grants to States to implement and enhance community-based microenterprise activities for the benefit of economically disadvantaged persons.

A. ETA intends to allocate approximately $1.4 million of JTPA Title III funds to States to implement and enhance community-based microenterprise activities. These funds shall be used to:

(1) train program staff in such entrepreneurial activities as business plan development, business management, resource inventory design, and marketing approaches, and other activities necessary to provide effective training to persons developing a microenterprise;

(2) provide to owners or potential owners of a microenterprise such technical assistance (including technical assistance with respect to business planning, securing funding, marketing, and production of marketing materials) and other assistance as may be necessary to develop microenterprise activities; and

(3) provide other microenterprise support (such as peer support program and counseling).

In accordance with the restriction at Section 141(q), these funds shall not be used to invest in revolving loan funds; capitalization of business; investment in contract bidding resource centers and similar activities; or for foreign travel.

B. While it is not the intent of this Solicitation to prescribe particular proportions or emphasis that a proposal should contain between the three activities listed immediately above, several guiding principles should be noted:

(1) The primary goal of this initiative is to implement and enhance community-based microenterprise activities, i.e., assist disadvantaged people who are dislocated workers—as defined by Section 301(a) of JTPA and described in Section H of this solicitation—in establishing and maintaining commercial enterprises employing five or fewer people.

(2) The staff development provided should create new capacity in the States to focus on the entrepreneurial training needs of disadvantaged people. The Department is aware that most States already possess some organizational capacity to assist generally in the formation and development of small business activity, most notably through the Small Business Development Centers described in the next segment. Proposals should not attempt simply to add to that existing capacity. It must be clearly demonstrated in the proposal how such staff training is necessary and how it will assist in achieving the primary goal stated in the preceding paragraph.

(3) The proposal should present a clear discussion of what activities related to microenterprise and economic development are already functioning within the State and how this new initiative will link those activities and add a new dimension to them. Examples of such activities include:

(a) *Empowerment Zones and Enterprise Communities* as authorized by Title XIII of the Omnibus Budget Reconciliation Act of 1993. Their mission is to provide favorable Federal income tax treatment and other incentives to encourage the conduct of trades or businesses and general

economic development within designated areas.

(b) *Small Business Development Centers (SBDC)* as authorized by the Small Business Act of 1953 as amended. Their stated mission is to provide management assistance to prospective and small business owners through one-on-one counseling and specialized training efforts.

(c) *Economic Development Districts (EDD)* as authorized by the Public Works and Economic Development Act of 1965, as amended. EDDs serve as the structural entities for formulating and implementing economic development plans and activities within boundaries.

These examples represent some of the types of existing activities and resources that should be considered in developing a proposal under this solicitation. Applicants are strongly encouraged to be exhaustive in examining available related resources and ongoing activities in order to maximize the potential impact of a microenterprise. The proposal should also indicate what linkages there will be to the JTPA system.

The resources that the State will provide to meet the 100 percent matching requirement should be discussed in some detail providing a clear understanding of what is to be provided and what the relevance/linkage of these resources is to the activities proposed and to successfully meeting the primary goal of the project.

C. Examples of key services and techniques that might be included in a proposal are:

(1) Recruitment and screening. This is an important element both in identifying program staff to be trained as trainers and in identifying and selecting individuals who show potential for owning a microenterprise.

(2) Case management. This would involve assigning an individual who provides guidance in all aspects of program participation and other services to microenterprise owners.

(3) Follow-up. Enrollment in and successful completion of a microenterprise training program may well be only the initial challenges facing the entrepreneur. A structured follow-up program involving such counseling and supportive services as deemed appropriate is a critical aspect of the program.

(4) Mentoring. This could involve assigning a volunteer businessperson from the community to serve in a one-on-one relationship with the new enterpreneur. Such volunteer service may not be considered for meeting the 100 percent matching requirement.

D. Reporting requirements. The Grantee is required to provide reports and documents listed below:

(1) Quarterly Financial Reports. The grantee shall submit to the Grant Officer's Technical Representative (GOT) within 30 days following the end of each quarter, three (3) copies of a quarterly Financial Status Report (SF 269) until such time as all funds have been expended or the period of availability has expired.

(2) Quarterly Progress Reports. The grantee shall submit to the GOT within 30 days following the end of each quarter, three (3) copies of a quarterly progress report which provides a detailed account of services provided during each quarter of grant performance. Reports shall include the following in brief narrative form:

(a) A description of overall progress of work activities accomplished during the reported period.

(b) An indication of current problems, if any, which may delay performance and any proposed corrective action.

(c) Program status and financial data/information relative to expenditure rate versus budget, anticipated staff changes, etc.

(3) Annual/Final Report. Each State that is a grant recipient shall, for each program year for which funds are received, submit a report that includes at a minimum a description of:

(a) The programs that have been established and developed with such funds, including a description of the persons participating and the microenterprise developed;

(b) The quantitative and qualitative benefits of such programs;

(c) The contributions of such programs to economic self-sufficiency and economic development;

(d) The types of services provided and an assessment of how well they worked in assisting participants to establish their own microenterprises;

(e) The characteristics of the individual participants served;

(f) Measures of pre- and post-program income (e.g., wage rates, business income, total income, etc.); and'

(g) The key lessons learned, including significant impediments, barriers or other problems experienced, and the measures used to address and/or overcome them.

These reports shall be due in draft no later than 45 days prior to the conclusion of the grant period for which it is being submitted.

Three (3) copies of the final report shall be due no later than the conclusion of the grant period.

Part III. Rating Criteria for Award/Selection Process

Prospective offerors are advised that the selection of grantees for award is to be made after careful evaluation of proposals by a panel of specialists within DOL. The panelists will evaluate the proposals for acceptability, with emphasis on factors enumerated below. The panel results are advisory in nature and not binding on the Grant Officer.

A. Evidence of Ability To Conduct and Monitor the Microenterprise Activities: (45 Points)

(1) The application must describe in specific terms the service delivery strategy that the applicant would utilize to implement its ideas. (30 points)

(2) The application should also contain a clear statement of the need for such a project, including the degree to which the service delivery strategy will assist in meeting that need. (15 points)

This overall discussion will be the measure for determining the ability to conduct and monitor such activities.

B. Evidence of State Commitment as Shown Through Existing or Proposed Related Programs and Support: (25 Points)

This section should include a detailed discussion of the coordination and linkages between programs and community organizations, as well as a discussion of the organizational capacity that the State intends to devote to this project. The emphasis under this criterion will be on programmatic resources which might enhance the training aspects of a project.

As noted earlier, it is recognized that most States have some form of economic development capacity already in place. The applicant must clearly state, particularly when discussing staff training for implementation of proposed microenterprise activities, how this activity will create a new capacity for the State to conduct such training. The proposal must provide assurances that resources under this grant will not be used to substitute for an ongoing State commitment to maintain an economic development capacity.

C. Evidence of Linkage(s) to Private, Community-Based Credit and Technical Assistance Providers: (15 Points)

Discussion of what financial resources are available to provide new entrepreneurs with start-up capital, such as a consortium of banks that has pledged to assist in this process. The primary emphasis under this criterion will be on linkages to financial resources.

D. Cost, To Include a Statement About the Size and Nature of The Non-Federal Match: (15 Points)

The cost effectiveness of the project as indicated by cost per participant and cost per activity in relation to services provided and outcomes anticipated. This section MUST contain a detailed discussion of the size, nature, and quality of the non-Federal match. Proposals not presenting a detailed discussion of the non-Federal match or not meeting the requirement of a 100 percent match will be considered nonresponsive.

Offerors are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The reviewers evaluations are only advisory to the Grant Officer. The final decisions for grant award will be made by the ETA Grant Officer, after considering the panelists scoring decisions. The Grant Officer's decisions will be based on what he or she determines is most advantageous to the Federal Government in terms of technical quality and other factors.

Announcement of Awards: Winners of this competition will be announced via the Internet at http://www/doleta.gov/.

Signed at Washington, D.C., this 4th day of April, 1997.

Janice E. Perry,

Grant Officer, Employment and Training Administration.

Appendices

A. SF 424, Application for Federal Assistance

B. Budget Information Sheet

BILLING CODE 4510–30–M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.);

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 97–9190 Filed 4–10–97; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title IV–D, Pilot and Demonstration Program: Out-of-School Youth Opportunity Area Demonstration

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and Solicitation for grant application (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a program to select a small number of sites to serve as demonstrations for a comprehensive approach aimed at improving the labor market prospects of out-of-school youth in high poverty areas. This demonstration would be designed to provide employment, education and training opportunities, mentoring support, leadership, development and other services as needed for all youth in the target areas designated as Empowerment Zones (EZ) or Enterprise Communities (EC). This notice provides information on the process that eligible entities must use to apply for these demonstration funds and how grantees will be selected.

Funds for these demonstration programs are authorized under the Job Training Partnership Act, (JTPA), Title IV–D. It is anticipated that up to $4.5 million will be available for funding.

DATES: The closing date for receipt of proposals is May 12, 1997 at 2:00 PM (Eastern Time).

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210; Attention: Ms. Brenda Banks, Reference SGA/DAA 97–013.

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Division of Acquisition and Assistance, Telephone: (202) 219–8694 (This is not a toll-free number). This solicitation will also be published on the Internet on the Employment and Training Administration's Home Page at http://www/doleta.gov.

SUPPLEMENTARY INFORMATION: All information required to submit a grant application is contained in this announcement. This announcement consists of five parts. Part I describes the purpose of the demonstration program. Part II describes the eligibility and award information. Part III includes the program outline of the demonstration projects. Part IV describes the application process. Part V describes the evaluation and rating criteria.

Part I—Purpose

This grant announcement continues a pilot demonstration of a new initiative for out-of-school youth proposed in the President's 1998 budget. Under this demonstration, an Opportunity Area would be created to expand employment, education, and training opportunities for out-of-school youth ages 16–24, with priority given to high school dropouts. The demonstration would be designed to provide employment, education and training opportunities, mentoring support, leadership development and other services as needed for all youth in the target areas. It would complement both the economic development initiative of the Empowerment Zone and the School-to-Work system being implemented. As some proportion of target area residents will live in public housing, it will also complement efforts by the Department of Housing and Urban Development (HUD) to address the isolation of public housing residents. The aim of the demonstration is to build a system of constructive education/training/employment and personal development activities for out-of-school youth that parallels the system being implemented for a school youth under the School-to-Work Opportunities Act so as to raise and maintain substantially higher employment rates for out-of-school youth.

Research findings have shown that both education and employment are critical factors in improving long term earnings for out-of-school youth. Another primary goal of this project is to raise employment rates in the target area to 80 percent among the out-of-school youth population through the creation of a new approach to addressing their needs.

Part II—Eligibility Requirements

Eligible Applicants

This grant competition is limited to Service Delivery Areas (SDAs) covering urban and rural sites designated by HUD and the Department of Agriculture as Empowerment Zones (EZ's), supplemental empowerment zones, Enterprise Communities (EC's), or enhanced enterprise communities. In EZ/EC's that include more than one SDA (e.g., Philadelphia/Camden and Kansas City, Missouri/Kansas), the SDAs can submit either separate applications or a joint application. SDAs shall provide evidence that they are located within the EZ/ECs. To be eligible to apply, SDAs will need to identify a contiguous set of census tracts with a population of at least 10,000 in the 1990 Census. SDAs will need to list as co-supporters the local public school system, the local EZ/EC governing board, representatives of major employer networks, including employers connected to the school-to-work effort, the State School-to-Work Partnership, and if applicable, the local School-to-Work Partnership. Community based organizations (CBOs) should also be involved in preparing the application. The State should also be involved in the application and the Governor should provide a letter of support.

Applicants should outline how they will also involve residents and youth in planning and implementation of the project. Partners and/or co-supporters are not necessarily subcontractors. Some will bring resources to the table that are already funded and available to youth in the targeted community.

Entities described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this SGA. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, that became effective January 1, 1996, prohibits the award of federal funds to these entities if they engage in lobbying activities.

Target Population

Application should identify a target area within the EZ/EC with a population of between 10,000 and 15,000 persons and poverty rate in the 1990 Census that is among the highest in the EZ/EC. In urban sites, the target area should be comprised of contiguous census tracts. In rural counties larger than 15,000, the target area should be comprised of contiguous census tracts or block numbering areas. In both urban and rural sites, the target area should include a high school and at least one middle school. It is particularly important in rural communities with a limited number of employers that job commitments be currently available.

Grant Awards

The Department expects to award two (2) grants of up to $2.250 million each under this competition. Pending availability of funds and grantee's performance, some level of second and third year funding may also be provided to the demonstration sites. Award decisions will be published on the Internet under the Department's Home Page at http://www/doleta.gov.

Part III—Program Outline

Program Components

Grant funds shall be used for building appropriate activities into a coherent system that connects disconnected youth to long term development relationships and services needed for permanent long term employment. The component parts of the system needs to be responsive to the particular problems of out-of-school youth in high poverty areas, especially the pervasive joblessness of males. Many appropriate building blocks and allowable activities may be operating in or near the target area. From programs such as the Center for Employment Training (CET), YouthBuild, WorkPlus, youth conservation corps, and alternative schools, we have learned some principles about ''what works'':

- Continuous support of a caring adult.
- Strong and effective connections to employers.
- Opportunities for improving educational skills and certification.
- Program support and services over an extended period of time.
- Motivation techniques, incentives, peer group activities, leadership training.

Through this grant, the services provided need to be strengthened in accordance with these principles and linked together to provide youth suitable options. Guidance in making choices need to be provided by adult mentors working with youth over an extended period of time. All components must effectively link youth to a network of employers, both public and private.

Allowable activities include, but are not limited to, job placement officers working to link youth with private sector employers; on-the-job training; training based on the model programs such as CET in San Jose; YouthBuild type programs directed towards rehabilitating inner-city housing and that teach leadership skills and prepare youth for construction careers; WorkPlus efforts to coordinate with employers to structure secondary labor market jobs into career ladders; alternative schools; local conservation corps programs for youth who need to gain disciplined work experience before being ready for private sector placement; and adult mentors working with youth over an extended period of time.

The CET program provides training in high-wage occupations and has strong links to the private sector. The WorkPlus program is in a sense of temporary employment service that provides youth with a series of jobs with progressive responsibilities. DOL expects that various CBOs in each site will operate many of the services provided under this grant.

The initiative will saturate the local community by making employment and training services available to all unemployed youth who reside in the community and by establishing an integrated administrative structure with other service providers who are already located in the community to attract and/or create needed services to achieve the goal of this demonstration.

Other activities should include teaching life skills that focus on such issues on ethics, loyalty, honesty, positive attitudes, and daily behavior and responsibilities that participants are expected to have for successful employment and a productive life style. Services should not be fragmented, but should operate as an integrated system that supports and furthers the notion of sustaining the effort beyond the grant period through the creation of a new or changed infrastructure.

The program's primary outreach, intake and counseling activities should operate through a neighborhood-based center. All other connecting activities should be easily accessible to program participants and should be provided in settings of small learning communities.

Investment of Co-Supporters and Other Partners: (Matching Requirement)

Applicants should use partnerships to enhance the out-of-school programs funded under the grant; and to provide complementary programs and services so as to make the target neighborhood an Opportunity Area for all youth. A one to one match is required. It is expected that co-supporters and other partners will invest State, local and other federal resources to secure the success of the project. Complementary projects should include: (1) school-to-work efforts in the target area high school; (2) commitments for specific numbers of career-track jobs by employers, both engaged in school-to-work efforts and those who are not; (3) school district efforts to reduce the dropout and truancy rates in area middle schools and high schools; (4) investments from State and other federal programs; (5) a public/private collaboration to start a College Bound Program in the target area; and (6) a comprehensive sports and recreation program for youth of all ages in the target neighborhood.

The application should provide dollar values of matching contributions from each supporter, and these figures will be included in the final grant budget. The investments of co-supporters and partners should equal or exceed the investment of DOL in the first year of the project, and this matching ratio will increase over the life of the grant.

Applicants also should agree to a good faith effort to continue initiatives started under this grant beyond the potential three year grant period. Applicants are encouraged to use State and local educational funds to support education and training services for youth who have dropped out of school.

Evaluation Component

The demonstration sites will be required to collect and maintain participant records so that this can be a learning experience for DOL. These participant records should be similar to the Standardized Program Information Reports (SPIR) required for JTPA Title II programs. *No funds under this grant should be set aside for local evaluations,* as the project will be evaluated through DOL. The DOL evaluation will be aimed primarily at learning from this demonstration how to better implement a broader Youth Opportunity Area initiative.

Sample Site Plan

One example of the type of plan that could be included in the proposal is shown below. This example is intended to be illustrative rather than prescriptive. It is expected that each community will develop a plan that is tailored to their area. In this example, the target community within the EZ/EC has a population of 15,000, with 2,240 16–24 year olds and with 20 percent of its population living in public housing. Roughly half of the 16–24 year olds are out-of-school and 40 percent of the out-of-school youth are employed. To reach an 80% employment level for this group will require 896 being employed, or 448 more jobs. To achieve this level of employment and to stem the dropout rate, the following programs will be developed with the DOL grant and matching funds (again, this is an example):

	DOL grant	Local match
Job Developers (250 youth @$2,000)	$400,000	.....

	DOL grant	Local match
CET training (75 youth @$6,500)	150,000	$337,500
On-the-job training (75 youth @$5,000)	250,000	125,000
YouthBuild (40 youth @$20,000)	600,000	200,000
Local conservation corps (40 youth @$20,000)	500,000	300,000
Alternative school (65 youth @$8,000)	260,000	260,000
Enhanced school-to-work effort	60,000	265,000
Middle school restructuring	30,000	230,000
Futures program in high school		200,000
College Bound program		200,000
Sports and recreation program		140,000
	2,250,000	2,257,500

The matching funds for other program services such as CET and OJT training could be used to serve 22-24 year olds, and thus come from JTPA Title II–A. The YouthBuild and conservation corps type programs matching funds could come from local corporations and foundations. Matching funds for a new alternative school in the target community would come from State or local education funds, HUD, and Pell grants. In addition to providing matching funds for job training programs, the local area should also provide matching funds for new initiatives to strengthen the target area's middle schools and high schools. These initiatives would include enhanced school-to-work efforts in the high school; a ''Futures'' program to prepare entering ninth graders for starting high school and to provide outreach workers to keep youth in school; a College Bound program; and a comprehensive sports and recreation program for youth. These initiatives would be paid for through a combination of public school funds, local corporations, and local foundations. A significant number of private sector jobs would also be pledged for participants.

Part IV—Application Process

Eligible SDAs must begin as quickly as possible forming the partnerships with State and local school-to-work efforts, local public schools, empowerment zones, and the private sector necessary to carry out this project. An original and three (3) copies of the proposal must be submitted. The proposal must consist of two (2) separate and distinct parts—Part I, the financial Proposal and Part II, the Technical Proposal. Applicants shall indicate on the SF–424 the organization's IRS Status. The Federal Domestic Assistance Catalog number is 17.249.

1. Financial Proposal must contain Standard Form 424, ''Application for Federal Assistance'' (Appendix A); and the ''Budget Information Sheet'' (Appendix B), for the first 18 month operating period. The budget must include on a separate page a detailed breakout of each budget line item.

2. Technical Proposal must not be more than 10 single spaced, single sided 8.5 × 11 inch pages with 1 inch margins. Attachments must not exceed 10 pages. Applications that fail to meet the page limitation requirement will not be considered. The technical proposal should reflect the local partnerships that are being developed, and should include answers to the following questions:

(a) What is the need in the target community? What is its population and poverty rate in the 1990 Census? What are the dropout rates of the target area high schools, as measured by the number of ninth graders enrolled in September of 1992 and the number of students graduating in June of 1996?

(b) What new system building initiatives for out-of-school youth will be funded with the grant? Show how these initiatives, particularly the employer connections, will be integrated into the new system.

(c) How will this new initiative fit into your overall EZ/EC?

(d) What school-to-work initiatives consistent with the School-to-Work Opportunities Act of 1994 currently exist in the target area high school? What additional school-to-work initiatives will be implemented if this grant is received to like employers with out-of-school youth?

(e) What dropout prevention efforts currently exist in the target area middle schools and high schools? What new initiatives are committed as a match if this grant is received?

(f) What do local major corporations promise as their role if the area becomes an opportunity area? The application should be clear in specifying existing private sector activities and new activities promised as a match. The specific number of jobs pledged for target area youth should be included in the application.

(g) What State and local public sector matching commitments are being promised? Again, the application should be clear in specifying existing public sector activities in the target area and new activities promised as a match. These may be neighborhood development projects, self supporting you corps, community service crops, etc.

(h) What strategy do you have for maintaining these enhanced services to out-of-school youth after the demonstration has ended? Will school funds be provided?

The technical proposal should also include letters of commitment from the local chief elected official and the Governor, and the letter of commitment signed by appropriate officials (Appendix C).

CLOSING DATE: All applications must be received at the specified location by May 12, 1997 at 2:00 p.m. (Eastern Time). Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if proposals are hand-delivered, they must be received at the designated place by 2:00 PM, Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered mail. Telegraphed and/or faxed proposals will be found to be nonresponsive and will not be honored. Proposals that fail to adhere to the above instructions will not be considered.

Late Proposals

Any proposal received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it—

(1) Was sent by U.S. Postal Service registered or certified mail no later than the fifth calendar day before the closing date specified for receipt of applications; or

(2) Was sent by U.S. Postal Service Express mail Next Day Service—Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two working

days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent by U.S. Postal Service registered or certified mail or Express Mail Next-Day Service—Post Office to Addressee is the U.S. postmark on the envelope or wrapper; or by the date entered by the post office receiving clerk on the mailing label; and on the original receipt from the Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part V—Evaluation Criteria

Prospective offerers are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel within DOL. Each panelist will evaluate the proposals for acceptability against the factors enumerated below. The panel results are advisory in nature and not binding on the ETA Grant Officer:

(1) Need in target neighborhood, as measured by its poverty rate in the 1990 Census (10 Points)

(2) Plan and capacity for conducting project. (30 Points)

(3) Level of investments of schools and other public sector partners. (25 Points)

(4) Level of investments (matching funds) of private sector partners, including commitments for private-sector jobs. (15 Points)

(5) Current school-to-work program and plans for next year's school-to-work program in target area high school. (10 Points)

(6) Dropout prevention plans. (10 Points)

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government, taking into account factors such as geographic diversity, mix of EZs and ECs, and demographic characteristics.

The Government may elect to award grant(s) without discussions with the offers. In such situations, an award based on the offerer's signature on the SF–424 constitutes a binding offer.

Signed at Washington, DC, this 4th day of April, 1997.

Janice E. Perry,

Grant Officer, Employment and Training Administration.

Appendices

1. Appendix—''Application for Federal Assistance'' (SF–424)
2. Appendix B—''Budget Information''
3. Appendix C—''Letter of Commitment''

BILLING CODE 4510–30–M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Ms. Janice E. Perry
Grant Officer
U.S. Department of Labor - ETA
200 Constitution Avenue, NW
Washington, D.C. 20210

Attention: Ms. Brenda Banks

Dear Ms. Perry:

The _____ Service Delivery Area (SDA) hereby applies for funds to become a demonstration site for the Department of Labor's (DOL) Opportunity Area Initiative. As a condition of award, we agree to provide a 1 to 1 match during each year of the grant. These matching funds can come from a variety of private and public sources -- including other federal funds -- as long as we can demonstrate that these are investments over and above what is currently being spent in the target area. We also agree to a good faith effort to continue initiatives started under this grant on a permanent basis. In particular, we agree to:

(1) Implement a school-to-work program in the target area high school.

(2) Provide private sector commitments for a specified number of career-track jobs for target area youth.

(3) Provide the state and local public sector investments as specified in the proposal.

(4) Develop dropout prevention programs in target area middle schools and high schools.

(5) Establish a college bound program for target area youth funded through a public/private partnership.

(6) Implement a comprehensive sports and recreation program for target area youth.

Sincerely,

_____
SDA Director

_____
Director of EZ/EC Coalition

_____
Superintendent of Schools

_____
Corporate Representative

_____
Director, School-to-Work Partnership

[FR Doc. 97–9191 Filed 4–10–97; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by the Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified

Volume I

New Hampshire
NH970001 (Feb. 14, 1997)
NH970002 (Feb. 14, 1997)
New Jersey
NJ970003 (Feb. 14, 1997)
New York
NY970003 (Feb. 14, 1997)

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Delaware
DE970005 (Feb. 14, 1997)
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PA970005 (Feb. 14, 1997)
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CA970113 (Feb. 14, 1997)
CA970114 (Feb. 14, 1997)
CA970115 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 4th day of April 1997.

Terry Sullivan,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–9094 Filed 4–10–97; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Accounting Guide for LSC Recipients

AGENCY: Legal Services Corporation.

ACTION: Proposed guidelines.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby publishes for comment by interested parties a proposed Accounting Guide for LSC Recipients (Guide), which would replace the accounting portions of the 1981 and 1986 editions of LSC Audit and Accounting Guide for Recipients and Auditors (Audit and Accounting Guide). The Audit Guide for LSC Recipients and Auditors, issued in 1995 and revised by the LSC Office of Inspector General in 1996, replaced the audit portions of both editions of the Audit and Accounting Guide. Thus, when this Guide is published in final, all previous editions of the Audit and Accounting Guide will become obsolete.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Copies of the Guide may be downloaded from LSC Homepage or HANDSNET, or requested via E-mail at ACCTGUID@SMTP.LSC.GOV or by voice mail at 202–336–8846 or by fax at 202–336–8854. Comments may be submitted in writing to the above E-mail address or to the Office of Program Operations, Legal Services Corporation, 750 1st Street, NE., Washington, DC 20002–4250, Attention: LSC Accounting Guide.

FOR FURTHER INFORMATION CONTACT: Charles Crittenden, Program Analyst, Office of Program Operations. (202) 336–8800.

SUPPLEMENTARY INFORMATION: In addition to assisting recipients and their auditors in understanding the accounting and reporting requirements for contracts and grants entered into with the LSC, the Guide revises and updates LSC accounting and financial reporting requirements and guidelines based on recently promulgated Generally Accepted Accounting Principles (GAAP) that apply to not-for-profit organizations. Using these new standards, the proposed Guide describes the accounting policies, guidelines, records, and internal control procedures that LSC considers adequate to provide proper accounting, financial reporting, and management of LSC funds.

Additionally, the Guide provides in individual appendices: (1) illustrative financial statement formats acceptable to LSC; (2) descriptions of recommended accounting records; (3) a sample chart of accounts; (4) accounting policies and procedures for property; (5) accounting for client trust funds; (6) other regulatory requirements for not-for-profit organizations; (7) checklist of accounting and internal control procedures; (8) LSC regulations setting accounting policies; (9) listing of GAAP for not-for-profit organizations; and (10) a glossary of terms and definitions.

The proposed guidelines are intended to reflect GAAP methods that will result in the most meaningful financial information for LSC, and for most readers of an LSC recipient's financial statements. The Corporation has established a 30-day comment period from the date of this notice, during which LSC invites general comments on the Guide and specific comments on the following issues:

(1) Classification of LSC Funds and Property: i.e., unrestricted, temporarily restricted or permanently restricted in the financial statements. The Guide classifies LSC funds as temporarily restricted net assets that remain restricted until eligible expenses are incurred on permissible activity, unearned LSC funds (i.e., formerly deferred support) as refundable advances until earned, and property purchased with LSC funds as a permanent restricted net asset. We invite comments on the impact of this treatment of LSC funds and property.

(2) Electronic transfer of Grant Activity: LSC is seeking to establish a uniform and effective means by which a recipient can electronically file audits and other financial reports with LSC. The electronic transfer necessarily would require uniform presentation of financial data. We solicit comments on the advisability and feasibility of accomplishing this result.

(3) Cost Allocations: We invite comments on what guidance would be useful regarding cost allocation procedures and bases.

(4) Appropriation of Net Assets/Fund Balances: The Guide proposes treating all unexpended funds at the end of the grant year as ''net assets,'' including amounts which could be deemed to be an excess ''fund balance'' subject to recovery by LSC under 45 CFR 1628. We also invite comment on the appropriate accounting treatment of reserves for encumbrances and contingencies which should be included in net assets (fund balances).

Where possible, comments should reference applicable paragraph numbers in the proposed revision.

Dated: April 8, 1997.

Merceria L. Ludgood,

Deputy Director.

[FR Doc. 97–9411 Filed 4–10–97; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

National Science Foundation Proposal/Award Information—Grant Proposal Guide; Submission for OMB Review: Comment Request

In compliance with the requirement of Section 3506(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) will publish periodic summaries of proposed projects. Such a notice was published at **Federal Register**, 4815, dated January 31, 1997. No comments were received. This material is being submitted for OMB review with no changes. Send any written comments to Desk Officer, OMB, 3145–0058, OIRA, Office of Management and Budget, Washington, DC 20503. Written comments should be received by May 1, 1997.

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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed project. ''National Science Foundation Proposal/Award Information—Grant Proposal Guide.'' The missions of the NSF are to: increase the Nation's base of scientific and engineering knowledge and strengthen its ability to support research in all areas of science and engineering; and promote innovative science and engineering education programs that can better prepare the Nation to meet the challenges of the future. The foundation is also committed to ensuring the Nation's supply of scientists, engineers, and science educators. In its role as leading Federal supporter of science and engineering, NSF also has an important role in national science policy planning.

The information collected is used to help the Foundation fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 30,000 proposals annually for new or renewal support for research, and math/science/engineering education projects, and makes approximately 10,000 new awards. This support is made primarily through grants contracts, and other agreements awarded to approximately 2,800 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based on mainly on evaluations of proposal merit submitted to the Foundation (see OMB Clearance No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its review and award processes to identify and address excessive reporting burdens. The Foundation is also committed to monitor and identify any real or apparent inequities based on gender, race, ethnicity, or handicap of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s). The collection of this information is a part of the regular submission of proposals to the Foundation.

Dated: April 4, 1997.

Gail A. McHenry,

NSF Clearance Officer.

[FR Doc. 97–9309 Filed 4–10–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–263, 50–282, 50–306, and 72–10]

Northern States Power Company (Monticello and Prairie Island Units 1 and 2 Nuclear Generating Plants and Prairie Island Independent Spent Fuel Storage Installation); Order Approving Transfer of Control of Licenses and Notice of Consideration of Proposed Issuance of Associated Amendments, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

I

Northern States Power Company (NSP) is owner and operator of Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation (ISFSI). NSP is governed by Facility Operating Licenses Nos. DPR–22, DPR–42, and DPR–60 issued by the U.S. Atomic Energy Commission (AEC) pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). Prairie Island Nuclear Generating Plant's Units 1 and 2 Facility Operating Licenses Nos. DPR–42, and DPR–60 were issued on August 9, 1973, and October 29, 1974, respectively. NSP was issued Provisional Operating License No. DPR–22 for the Monticello Nuclear Generating Plant on September 8, 1970, and Facility Operating License No. DPR–22 on January 9, 1981. NSP is also governed by Materials License No. SNM–2506 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 72 on October 19, 1993. The Monticello Nuclear Generating Plant is located in Wright County, Minnesota. The Prairie Island Nuclear Generating Plant, Units 1 and 2, and the Prairie Island ISFSI are located in Goodhue County, Minnesota.

II

By letter dated October 20, 1995, NSP informed the Commission that it intends to transfer ownership of the facility operating licenses for Monticello Nuclear Generating Plant, the Prairie

Island Nuclear Generating Plant, Units 1 and 2, and the Prairie Island ISFSI from NSP to a newly formed NSP, which will result from a merger between NSP and WEC Sub Corp., a subsidiary of Wisconsin Electric Corporation (WEC). In connection with the proposed transaction, WEC will be renamed Primergy Corporation (Primergy) and will own two operating utility subsidiaries: (1) The New NSP, which will be a Wisconsin corporation (referred to herein as ''New NSP''), and (2) a current WEC subsidiary, Wisconsin Electric Power Company (WEPCO), into which Northern States Power (Wisconsin), a former subsidiary of NSP, will have merged, and which will be called Wisconsin Energy Company. New NSP will continue to operate primarily the same facilities in the same locations as those that NSP currently does.

The transfer of Facility Operating Licenses Nos. DPR–22, DPR–42, and DPR–60 is subject to NRC's approval under 10 CFR 50.80. The transfer of Prairie Island ISFSI License No. SNM–2506 is subject to NRC's approval under 10 CFR 72.50. After reviewing the information submitted in the letter of October 20, 1995, and other information before the Commission, the NRC staff has determined that New NSP is qualified to hold the licenses to the extent and for the purposes NSP is now authorized to hold the licenses, and that the transfer, subject to the conditions set forth herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. These findings are supported by the accompanying safety evaluation dated April 1, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, IT IS HEREBY ORDERED that the Commission consents to the proposed transfer of control of the licenses described herein from NSP to New NSP subject to the following: (1) The issuance of approved amendments fully reflecting the transfers approved by this Order at the time such transfers are effected; (2) should the transfers not be completed by September 30, 1997, this Order shall become null and void provided, however, on application and for good cause shown, such date may be extended; and (3) New NSP shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from New NSP to its parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of New NSP's consolidated net utility plant, as recorded on New NSP's books of account, consistent with NSP's letter dated August 28, 1996, to the NRC.

This Order is effective upon issuance.

IV

By May 12, 1997, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d), in the same manner as is more fully discussed below regarding requests for hearing and petitions for leave to intervene in connection with proposed facility license amendments.

If a hearing is held concerning this Order, the Commission will issue an Order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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. Copies should also be sent to the Office of the General Counsel, and to the Directors, Office of Nuclear Reactor Regulation and Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gary Johnson, Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401, attorney for the licensee.

V

With respect to Facility Operating Licenses Nos. DPR–22, DPR–42, and DPR–60, described herein, notice is hereby given that the Commission is considering the issuance of amendments to the licenses to reflect the above transfer approved by the Commission. NSP stated in a letter dated December 6, 1995, that the application does not involve a request for any change in the design, operation, or administrative controls of the Monticello Nuclear Generating Plant, or the Prairie Island Nuclear Generating Plant, Units 1 and 2, or any change in the terms and conditions of the existing licenses or technical specifications. NSP further stated in its submittal dated October 20, 1995, that the financial capability of the owner and operator will be maintained, that New NSP (as owner and operator) will remain qualified to be the holder of the licenses, and that the transfer of the licenses is consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed facility license amendments, 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 facility amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments 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 the margin of safety. As required by 10 CFR 50.91(a), NSP has submitted its analysis of the issue of no significant hazards consideration, which is given below:

The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

As a result of the proposed license amendment[s], there will be no physical change to the facilities and all Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications will remain unchanged. Also, the facilities' Quality Assurance Program, Emergency Plan, Security Plan, and Operator Training and Requalification Program will be unaffected. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment[s] will have no effect on the physical configuration of the facilities or the manner in which they will operate. The design and design basis of the facilities will remain the same. The current safety analyses will therefore remain complete and accurate in addressing the design basis events and in analyzing accident response and consequences for the facilities.

The Limiting Conditions for Operations, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications for the facilities are not affected by the proposed license amendment[s].

As such, the conditions for which the design basis accident analysis have been performed will remain valid. Therefore, the proposed license amendment[s] cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment[s] will not involve a significant reduction in the margin of safety.

Facility safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the facilities, there will be no change to any of these margins. Thus the proposed license amendment[s] will not involve a significant reduction in any margin of safety.

Based upon the analysis and description of the transaction in our submittal dated October 20, 1995, the proposed license amendment[s] only reflects a change in ownership of NSP and will not involve a significant increase in the probability or consequences of any accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a reduction in a margin of safety. As a result, the proposed change meets the requirements of 10 CFR Part 50, Section 50.95(c) and does not involve a significant hazards consideration.

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 requests involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments 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 amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 2, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, 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 Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota. If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that 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 that the 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 that 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 that supports the contention and on which the petitioner intends to rely in providing 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. The 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 amendments under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requests involve no

significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment requests involve 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. When 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. John N. 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 Gary Johnson, Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401, 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 on the basis of 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 the transfer of control of licenses dated October 20, 1995, the application for amendments dated December 6, 1995, and NSP's commitment to notify NRC of certain transfers of assets dated August 28, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Rockville, Maryland, this 1st day of April 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–9303 Filed 4–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 50–388]

Pennsylvania Power and Light Company Susquehanna Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–14 and NPF–22, issued to Pennsylvania Power and Light Company (the licensee), for operation of Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would change the technical specifications for each unit by increasing the High (Upscale) rod block setpoints associated with the rod block monitor (RBM) system for the two loop and single loop operation. Specifically, the nominal trip setpoints would be changed from 0.63W + 41% to 0.58W + 52% for two loop operation and from 0.63W + 35% to 0.58W + 47% for single loop operation. In addition, the allowable values would be changed for two loop operation from 0.63W + 43% to 0.58W + 55% and for single loop operation from 0.63W + 37% to 0.58W + 50%. It also would change the RBM channel calibration frequency requirements from quarterly for Unit 1, from semiannually for Unit 2 to during refueling outage periods; and the allowed out-of-service times for the RBM system from 24 hours to 7 days with one RBM channel inoperable, and from one hour to 48 hours with both RBM channels inoperable.

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.

By May 12, 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 Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701. 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.

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 F. Stolz, Director, Project Directorate I–2: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the applications for amendment dated November 27, 1996, as supplemented February 12, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 4th day of April 1997.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9395 Filed 4–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Company Susquehanna Steam Electric Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–14 and DPR–22, issued to Pennsylvania Power and Light Company (PP&L) (the licensee), for the operation of Susquehanna Steam Electric Station (SSES), Units 1 and 2, located at the licensee's site in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will add to the current SSES Technical Specifications (TSs) (Special Test Exception Section 3.10.7 and 3.10.8), the Improved Technical Specifications Sections (ITS) 3.10.3 and 3.10.4 in a modified format and with applicable cross references.

The proposed action is in accordance with the licensee's amendment request dated February 11, 1997.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TSs. The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors,'' (52 FR 3788, February 6, 1987) and later the Final Policy Statement (58 FR 39132, July 22, 1993), formalized this need. To facilitate the development of individual ITS, each reactor vendor owners group (OG) and the NRC staff developed standard TS (STS). For General Electric (GE) plants, the STS are NUREG–1433 for BWR/4 reactor facilities and NUREG–1434 for BWR/6 facilities. NUREG–1433 formed the basis of the SSES ITS. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants.

Description of the Proposed Change

The February 11, 1997 submittal requested that two sections be approved prior to the staff approval of the entire ITS to adopt Sections 3.10.3 and 3.10.4 of the ITS into the current TS Special Test Exception Sections 3.10.3 and 3.10.4. This change will permit control rod testing during refueling outages. The only creditable accident associated with control rod testing during the refuel outage is the ''Rod Withdrawal Error—Low Power'' and is addressed in Section 15.4.1 of SSES Updated Final Safety Analysis Report (UFSAR).

The February 11, 1997 request is part of a larger amendment request submitted on August 1, 1996. The requests are based on NUREG–1433 and on guidance provided in the above-referenced Policy Statement. If granted, the amendments would completely rewrite, reformat, and streamline the existing TSs. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section would be significantly expanded to clarify and better explain the purpose

and foundation of each specification. In addition to NUREG–1433, portions of the existing TSs were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the OGs.

Environmental Impacts of the Proposed Action

As stated above, the only plausible consequence of the proposed action is a rod withdrawal error during low power. The effects of such an error were analyzed in ''Rod Withdrawal Error-Low Power,'' Section 15.4.1 of the UFSAR. This analysis indicates that withdrawal of a single rod during refueling is insufficient to cause criticality and thus no radioactive materials would be released. The proposed change to the TSs does not change this conclusion.

Additionally, the proposed revision to the TS was found to provide control of plant operations, specifically control of rod movement during Conditions 3 and 4. Thus, reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

The Commission has concluded there are no significant environmental impacts associated with the proposed amendment. 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 no-action alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not considered previously in the Final Environmental Statement for the Susquehanna Steam Electric Station, Units 1 and 2, dated June 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on March 27, 1997, the staff consulted with the Pennsylvania State official, Mr. David Ney of the Pennsylvania Department of Environmental Resources, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the licensee's letter dated February 11, 1997. The letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 4th day April of 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9393 Filed 4–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Degradation of Control Rod Drive Mechanism Nozzle and Other Vessel Closure Head Penetrations; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 97–01 to notify all holders of operating licenses for pressurized water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, of the need for information concerning their programs for ensuring the timely inspection of control rod drive mechanism (CRDM) and other vessel closure head penetrations. The information requested is needed by the NRC staff to verify compliance with 10 CFR 50.55a and 10 CFR Part 50, Appendix A, GDC 14, and to determine whether an augmented inspection program, pursuant to 10 CFR 50.55a(g)(6)(ii), is required.

The proposed generic letter is a ''rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C., Chapter 8). The staff has received confirmation from the Office of Management and Budget that the generic letter is a non-major rule.

This generic letter is available in the NRC Public Document Room under accession number 9703260336.

DATES: The generic letter was issued on April 1, 1997.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: C. E. Carpenter, Jr. at (301) 415–2169.

SUPPLEMENTARY INFORMATION: The NRC staff has concluded that vessel closure head penetration (VHP) cracking does not pose an immediate or near term safety concern. In the long term, however, the degradation of CRDM nozzles and other VHPs is an important safety consideration that warrants further evaluation. The vessel closure head provides the vital function of maintaining reactor pressure boundary. Cracking in the VHPs has occurred and is expected to continue to occur as plants age. The NRC staff considers cracking of VHPs to be a safety concern for the long term based on the possibility of (1) Exceeding the American Society of Mechanical Engineers (ASME) Code for margins if the cracks are sufficiently deep and continue to propagate during subsequent operating cycles, and (2) eliminating a layer of defense in depth for plant safety. Therefore, to verify that the margins required by the ASME Code, as specified in 10 CFR 50.55a are met, that the guidance of General Design Criterion 14 of Appendix A to 10 CFR Part 50 is continued to be satisfied, and to ensure that the safety significance of VHP cracking remains low, the NRC staff believes that an integrated, long-term program, which includes periodic inspections and monitoring of VHPs, is necessary. In addition, the NRC staff finds that the requested information is also needed to determine if the imposition of an augmented inspection program, pursuant to 10 CFR 50.55a(g)(6)(ii), is required to maintain public health and safety. The staff is not

establishing a new position for compliance in this generic letter.

Dated at Rockville, Maryland, this 3rd day of April 1997.

For the Nuclear Regulatory Commission.

Marylee M. Slosson,

Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9392 Filed 4–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Removal of the Texas Instruments, Incorporated, Attleboro, Massachusetts Site From the NRC Site Decommissioning Management Plan and Termination of the NRC License for the Facility

SUMMARY: This notice is to inform the public that the U.S. Nuclear Regulatory Commission is removing the Texas Instruments, Incorporated, Attleboro, Massachusetts site from the NRC Site Decommissioning Management Plan (SDMP). NRC has determined that remediation of residual radioactive contamination, as a result of past operations with NRC licensed material in buildings and in exterior areas on the site, has successfully been completed and the facility meets the current NRC criteria for release for unrestricted use.

FOR FURTHER INFORMATION CONTACT: Mark Roberts, Division of Radiation Safety and Safeguards, Region I, 475 Allendale Road, King of Prussia, PA 19406, Telephone: (610) 337–5094.

SUPPLEMENTARY INFORMATION: The Texas Instruments, Incorporated site in Attleboro, Massachusetts was identified in 1990 by NRC as a site where residual radioactive contamination was present, as a result of past operations. Radioactive contamination was identified by Texas Instruments in a former burial area on the site. In order to ensure that remediation of the burial area was accomplished in a timely manner, NRC added this site to its SDMP. Contamination in three of the site buildings, as well as additional exterior contamination, was subsequently identified. Texas Instruments has remediated residual contamination in all of these areas, performed radiological surveys throughout the entire site and site buildings, where radioactive materials may have been used, and requested, by letter dated October 29, 1996, that NRC remove the Attleboro, Massachusetts site from the SDMP and terminate the license.

NRC staff has periodically inspected the site remediation activities, reviewed final radiological surveys performed by the licensee's contractors, and performed confirmatory measurements at the site. NRC staff has determined that the facility meets the requirements for release for unrestricted use and has removed the site from the SDMP and terminated the NRC license.

For further details with respect to this action, documents are available for inspection at NRC's Region I office located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I office should call Ms. Cheryl Buracker at (610) 337–5093 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, Maryland this 7th day of April 1997.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–9394 Filed 4–10–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22602; File No. 812–10476]

EQ Advisors Trust, et al.

April 4, 1997.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: EQ Advisors Trust (''Trust''), The Equitable Life Assurance Society of the United States (''Equitable''), Equitable Distributors, Inc. (''EDI''), EQ Financial Consultants, Inc. (''Manager'') and certain life insurance companies and their separate accounts investing now or in the future in the Trust.

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Appliants seek exemptive relief to the extent necessary to permit shares of the Trust and any other investment company that is designed to fund variable insurance products and for which Equitable, EDI, the Manager of any of their affiliates may serve as investment adviser, manager, administrator, principal underwriter, or depositor (collectively ''Insurance Products Funds'') to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by affiliated or unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans outside of the separate account context (''Plans'').

FILING DATE: The application was filed on December 31, 1996, and amended on April 1, 1997.

HEARING AND NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 29, 1997, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Jane A. Kanter, Esq., Katten Muchin & Zavis, 1025 Thomas Jefferson Street, N.W., East Lobby, Suite 700, Washington, D.C. 20007–5201.

FOR FURTHER INFORMATION CONTACT: Michael B. Koffler, Staff Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust is a Delaware business trust which is registered pursuant to the 1940 Act as an open-end, management investment company. The Trust consists of multiple separately managed investment portfolios (''Portfolios'') and may in the future issue shares of additional portfolios.

2. The Trust has adopted a plan pursuant to Rule 18f–3 of the 1940 Act in order to offer multiple classes of shares of each of its Portfolios. Two such classes are currently contemplated and have been preliminarily designated

Class IA and Class IB. In addition, the Trust has adopted a plan pursuant to Rule 12b–1 of the 1940 Act to permit one or more of its classes of shares to pay for the distribution of its shares.

3. The Manager, the investment manager for the Trust, is a corporation organized pursuant to the laws of Delaware and is registered as an investment adviser pursuant to the Investment Advisers Act of 1940. The Manager is responsible for providing investment management and administrative services to the Trust. In the exercise of its responsibility, the Manager selects other registered investment advisers (''Advisers'') for the Trust's portfolios and monitors the Advisers' investment programs and results, reviews brokerage matters, oversees compliance matters and supervises the provision of services by third parties such as the Trust's custodian. The Manager has entered into or will enter into investment advisory agreements with the Advisers that will be primarily responsible for the day-to-day investment program of each Portfolio. The Manager also serves as the principal underwriter for the Trust's Class IA shares. The Manager is an indirect, wholly-owned subsidiary of Equitable.

4. Shares of each Portfolio may be offered to insurance company separate accounts, which are both registered and unregistered under the federal securities laws, that fund variable annuity contracts or variable life insurance policies (''Contracts''). The Trust initially intends to offer its shares to variable annuity and variable life insurance separate accounts established by Equitable.

5. Following the grant by the Commission of the exemptive order requested by the application to which this notice relates, shares of each Portfolio may be offered to variable annuity and variable life insurance separate accounts established by other affiliated and unaffiliated insurance companies.

6. The Participating Insurance Companies will establish their own separate accounts and design their own Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. The role of the Insurance Products Funds, so far as the federal securities laws are concerned, will be limited to that of offering their shares to separate accounts of the Participating Insurance Companies and the Plans and of fulfilling the conditions imposed by the Commission provided in the application to which this notice relates.

7. Shares of each Portfolio may also be offered to Plans. The Plans may choose any of the Insurance Products Funds as the sole investment under the Plan or as one of several investment options. Participants in Plans may or may not be given an investment choice depending upon the Plan itself.

8. The Manager and Advisers will not act as an investment manager or investment adviser to any of the Plans that purchase shares of any of the Insurance Products Funds, unless permitted by applicable law.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit ''mixed'' and ''shared'' funding, as defined below.

2. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by the rule also extends to the investment adviser, principal underwriter, and sponsor or depositor of a separate account.

4. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated or unaffiliated life insurance company. The use of a common investment company as the underlying investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as ''mixed funding.'' Also, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

5. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common investment company as the underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional relief is necessary if the shares of the Insurance Products Funds are also to be sold to Plans.

6. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Thus, Rule 6e–3(T)(b)(15) grants an exemption if the underlying management investment company engages in mixed funding, but not if it engages in shared funding. Moreover, because the relief granted by 6e–3(T)(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional relief is necessary if shares of the Insurance Products Funds are also to be sold to Plans.

7. The current tax law permits the Insurance Products Funds to increase their asset base through the sale of their shares to Plans. Section 817(h) of the Internal Revenue Code (''Code'') imposes certain diversification

requirements on the underlying assets of the Contracts invested in the Insurance Products Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance policy for any period in which the underlying assets are not adequately diversified, as prescribed by Treasury regulations. To meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts. Treas. Reg. § 1–817–5(f)(3)(iii).

8. The promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these treasury regulations. Given the then-current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Applicants assert that if the Insurance Products Funds were to sell their shares only to Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans or to a registered investment company's ability to sell its shares to Plans. It is only because the separate accounts investing in the Insurance Products Funds are themselves investment companies seeking relief under Rules 6e–2 and 6e–3(T), and do not wish to be denied such relief if the Insurance Products Funds sell to Plans, that Applicants are applying for the requested relief.

Disqualification

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These rules provide: (a) that the eligibility restrictions of Section 9(a) shall not apply to persons who are officers, director or employees of the life insurer or its affiliates who do not participate directly in the management or administration of the underlying fund; and (b) that an insurer shall be ineligible to serve as an investment adviser or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the underlying fund.

11. Applicants assert that applying the restrictions of Section 9(a) to many individuals in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies funding the separate accounts of the Participating Insurance Companies, would serve no regulatory purpose.

12. Applicants submit that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans. Applicants submit that sales to those entities do not change the fact that the purposes of the 1940 act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have no involvement in the underlying fund.

Pass-Through Voting

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided by the Participating Insurance Companies so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners.

14. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions form Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent these sections have been deemed by the Commission to require pass-through voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its Contract owners in certain circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(15)(b)(iii)(A) provide that an insurance company may disregard the voting instructions of its Contract owners with respect to the investments of an underlying investment company or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard the voting instructions of its Contract owners if the Contract owners initiate any change in the underlying investment company's investment objectives, principal underwriter, or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

15. Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognizes that exemptions from pass-through voting requirements were necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants state that, in this respect, flexible premium variable life insurance contracts are subject to substantially the same state insurance regulatory authority; therefore, the corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

16. Applicants further represent that the offer and sale of the Insurance Products Funds' shares to Plans will not have any impact on the relief requested in this regard. Shares of the Insurance Products Funds sold to Plans will be held by the trustee(s) (or custodian(s)) of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control Plan investments with two exceptions: (a) when the Plan expressly provides that the Fund Trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the Trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote

the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass through voting to the participants in the Plans. Accordingly, Applicants note that unlike the case with separate accounts of Participating Insurance Companies, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to the Plans.

Conflicts of Interest

17. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. For example, when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants assert that this possibility is no different and no greater than exists when a single issuer and its affiliates offer their insurance products in several states, as currently is permitted.

18. Applicants submit that affiliations do not reduce the potential for differences in state regulatory requirements. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. In any event, the conditions proposed below (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulatory decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in the relevant Insurance Products Fund.

19. Similarly, affiliation does not eliminate the potential for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. The potential for disagreement is limited by the requirement in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, then such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Product Fund, and no charge or penalty will be imposed as a result of such withdrawal.

20. Applicants submit that there is no reason why the investment policies of an Insurance Product Fund with mixed funding would or should be materially different from what they would or should be if such investment company or portfolio thereof funded only variable annuity contracts or only variable life insurance policies. Hence, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, the Insurance Product Fund will not be managed to favor or disfavor any particular insurer, type of Contract or Plan.

21. Applicants note that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance Contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. An investment company supporting even one type of insurance product must accommodate these diverse factors.

22. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies, such as those held in each separate portfolio of the Insurance Product Funds. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Applicants assert that, therefore, neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder recognize any inherent conflicts of interests if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying management investment company.

23. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate accounts or the Plans cannot net purchase payments to make the distributions, the separate accounts or the Plans will redeem shares of the Insurance Products Funds at their net asset value. The Plans will then make distributions in accordance with the terms of the Plans and each Participating Insurance Company will make distributions in accordance with the terms of its Contract.

24. Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners. Applicants represent that the Insurance Products Funds will inform each Participating Insurance Company of its respective share of ownership in each separate account and will also inform the trustees of the Plans of their respective share in the Insurance Products Funds. The Participating Insurance Companies will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

25. Applicants submit that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security'' as defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants under the Plans, or Contract owners under Contracts, the Plans and the separate accounts have rights only with respect to their respective shares of the Insurance Products Funds. They can redeem such shares only at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants assert that there are no conflicts between the Contract owners of the separate accounts and the participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of Plans or participants in participant-directed Plans can make such a decision quickly and implement the redemption of their shares from an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is

the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of Plans or participants in Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of an Insurance Products Fund.

27. Applicants assert that various factors have kept more insurance companies from offering Contracts than currently do so. These factors include the costs of organizing and operating a fund medium, the lack of expertise with respect to investment management and the lack of public name recognition as investment experts. Smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

28. Applicants assert that use of the Insurance Products Funds as common investment media for the Contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment management and advisory expertise of the Manager and Advisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of assets. Therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Contracts. This should result in increased competition with respect to both Contract design and pricing, which can be expected to result in more product variation and lower changes. Contract owners would benefit because mixed and shared funding should eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that the sale of shares of Insurance Products Funds to Plans should result in an increased amount of assets available for investment by such Insurance Products Funds. This, in turn, should inure to the benefit of Contract owners by promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new Portfolios to the Trust or to each of the Insurance Products Funds more feasible.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding.

Applicant's Conditions

To the extent required by the Commission, Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Board of Directors (the ''Board'') of each Insurance Products Fund will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee(s) or director(s), then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Insurance Products Funds for the existence of any material irreconcilable conflict among the interests of the Contract owners of all the separate accounts investing in the Insurance Products Funds and the participants in Plans investing in the Insurance Products Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Funds are being managed; (e) a difference in voting instructions given by variable annuity Contract owners and variable life insurance policy owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of its participants.

3. Participating Insurance Companies, the Manager, the Advisers, and any Plan that executes a fund participation agreement upon becoming an owner of ten percent (10%) or more of the assets of an Insurance Products Fund (a ''Participating Qualified Plan'') we report any such potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participating Insurance Companies, the Manager, the Advisers, and Participating Qualified Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by a Participating Insurance Company to inform the appropriate Board whenever voting instructions of Contract owners are disregarded, and, if pass-through voting is applicable, an obligation by each Participating Qualified Plan to inform the Board whenever it has determined to disregard the voting instructions of its participants. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Qualified Plans, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of participants in such Plans.

4. If it is determined by a majority of the Board of an Insurance Products Fund, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the separate accounts from the Insurance Products Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of an Insurance Products Fund or another Insurance Products Fund; (b) submitting the question of whether such withdrawal should be implemented to a vote of all affected Contract owners and, as appropriate, withdrawing the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one of more Participating Insurance Companies) that votes in favor of such withdrawal, or offering to the affected Contract owners the option of making such a change; (c) withdrawing the assets allocable to some or all of the Plans from the Insurance Products Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of an Insurance Products Fund or another Insurance Products Fund; and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard Contract owner voting instructions and that decision

represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund to withdraw its separate account's investment in such Insurance Products Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard its participants' voting instructions, if applicable, and that decision represent a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Qualified Plans under their agreements governing their participation in the Insurance Products Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners and participants in such Plans, as applicable. For purposes of this condition 4, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Insurance Products Fund, the Manager or the Advisers be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by vote or a majority of Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan shall be required by this condition 4 to establish a new funding medium for any Qualified Plan if: (a) a majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Qualified Plan makes such decision without a vote of its participants.

5. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to all Participating Insurance Companies and all Plans.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Insurance Products Funds held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in an Insurance Products Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Insurance Products Fund. Each Participating Insurance Company will also vote shares for which it has not received timely voting instructions from Contract owners as well as shares attributable to it in the same proportion as it votes shares for which it has received voting instructions from Contract owners. Each Plan will vote as required by applicable law and governing Plan documents.

7. All reports of potential or existing conflicts received by a Board, and all Board actions with regard to determining the existence of a conflict of interest, notifying Participating Insurance Companies and Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Insurance Products Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) shares of the Insurance Products Fund are offered to insurance company separate accounts on a mixed and shared funding basis and to Plans; (b) material irreconcilable may arise between the interests of various Contract owners participating in the Insurance Products Fund and the interests of Plans investing in the Insurance Products Fund; and (c) the Board of such Insurance Products Fund will monitor events in order to identify the existence of any material irreconcilable conflict and to determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Insurance Products Fund), and, in particular, each Insurance Products Fund will either provide for annual shareholder meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees or directors and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or in Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the Order requested by the Applicants, then the Insurance Products Funds and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extend applicable.

11. No less frequently than annually, the Participating Insurance Companies and Participating Qualified Plans, the Manager, and the Advisers, shall submit to each Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in this Application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials, and data shall be a contractual obligation of all Participating Insurance Companies and Participating Qualified Plans under the agreements governing their participation in the Insurance Products Funds.

12. If a Plan should ever become an owner of ten percent (10%) or more of the assets of an Insurance Products

Fund, such Plan will execute a fund participation agreement with such Insurance Products Fund including the conditions set forth herein to the extent applicable. A Plan will execute an investor application containing an acknowledgment of this condition at the time of its initial purchase of any Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9344 Filed 4–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—22601; File No. 812–10486]

General American Life Insurance Company, et al.

April 4, 1997.

AGENCY: Securities and Exchange Commission (the ''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: General American Life Insurance Company (''General American'') and General American Capital Company (''Capital Company'') (collectively, ''Applicants'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 17(b) of the 1940 Act granting an exemption from the provisions of Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the assets of General American's Separate Account Twenty (''Separate Account'') to be transferred to the Small-Cap Equity Fund series of Capital Company in exchange for shares of the Small-Cap Equity Fund series.

FILING DATE: The application was filed on January 10, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 29, 1997, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Any person may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants, c/o Matthew P. McCauley, Esq., General American Life Insurance Company, 700 Market Street, St. Louis, Missouri 63101. Copies to Stephen E. Roth, Esq., Sutherland, Asbill & Brennan, L.L.P., 1275 Pennsylvania Avenue, N.W., Washington, D.C. 20004–2404.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. General American is a mutual life insurance company organized under the laws of Missouri. The Separate Account was established in September 1985 as a separate investment account of General American to support benefits payable under the variable portion of certain group variable annuity contracts issued by General American (''Contracts''). The Separate Account is exempted from the definition of investment company pursuant to Section 3(c)(11) of the 1940 Act, and interests in the Separate Account are exempt securities pursuant to Section 3(a)(2) of the 1940 Act. The Contracts provide retirement benefits under tax-qualified retirement programs.

2. The Separate Account currently consists of a single portfolio of assets, primarily equity securities. The investment objective of the Separate Account is to provide a rate of return that corresponds to the performance of the common stock of small companies, while incurring a level of risk that is generally equal to the risks associated with small company common stock in general. The Separate Account is passively managed to attempt to replicate the return of the bottom capitalization quintile of the New York Stock Exchange traded securities.

3. Capital Company is a registered open-end diversified management investment company organized as a series fund. Capital Company serves as a funding vehicle for variable annuity contracts and variable life insurance policies issued by General American and affiliated insurance companies. Currently, shares of Capital Company are offered to General American Separate Account Two, General American Separate Account Eleven, unregistered separate accounts of General American, and separate accounts of RGA Reinsurance Company, Security Equity Life Insurance Company, Cova Financial Services Life Insurance Company, Cova Financial Life Insurance Company, and First Cova Life Insurance Company, all affiliates of General American.

4. Capital Company consists of seven investment portfolios: the S&P 500 Index Fund; Money Market Fund; Bond Index Fund; Managed Equity Fund; Asset Allocation Fund; International Index Fund; and Mid-Cap Equity Fund. Capital Company offers its shares at net asset value and without sales charge, directly to the separate accounts without an underwriter or distributor. General American pays any distribution expenses and costs arising from any activity intended primarily to result in the sale of shares issued by Capital Company.

5. Conning Asset Management Company (''Adviser'') serves as the investment advisor to Capital Company and to the Separate Account. The advisor is wholly owned by Conning Corporation which, in turn, is wholly owned by General American Holding Company, a wholly owned subsidiary of General American.

6. The Board of Directors of Capital Company has determined that it would be desirable to add a new series to Capital Company to be called the Small-Cap Equity Fund (''Fund'').[1] The Fund's Investment objective will be identical to that of the Separate Account. Because the investment objectives, policies, and restrictions of the Fund would mirror those of the Separate Account, management of General American proposes to transfer the assets of the Separate Account to the Fund (the ''Transfer'') in exchange for shares of the Fund. The Separate Account would in

[1] On February 15, 1997, a post-effective amendment to Capital Company's current registration statement on Form N–1A was filed for the purpose of adding the Small-Cap Equity Fund as a new series of Capital Company. The registration statement (File No. 33–10145) will become effective on May 1, 1997.

effect be converted to a unit investment trust-type separate account that would invest in a corresponding series of Capital Company.

7. On the effective date of the Transfer, General American, on behalf of the Separate Account, would transfer the portfolio assets and related liabilities of the Separate Account to the Fund in return for shares of the Fund. General American would record shares issued by the Fund as assets of the Separate Account. The Transfer would be carried out in compliance with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. The value of the net assets of the Separate Account would be determined as of the business day immediately preceding the effective date of the Transfer. The number of shares of the Fund to be issued to the Separate Account would be determined by dividing the value of net assets to be transferred from the Separate Account by the current per share value of the Fund's shares. Accordingly, the interests of the Separate Account owners in the Fund immediately following the Transfer would be equivalent to their interests in the assets of the Separate Account immediately prior to the Transfer.

Applicants' Legal Analysis

1. Section 17(a) of the 1940 Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, ''(1) Knowingly to sell any security or other property to such registered company * * *; [or] (2) knowingly to purchase from such registered company * * * any security or other property. * * *''

2. Section 2(a)(3) of the 1940 Act defines the term ''affiliated person'' of another person to include, in pertinent part, ''(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; * * * [and] (E) if such other person is an investment company, any investment adviser thereof. * * *''

3. Applicants state that each of them may be deemed to be an affiliated person or an affiliated person of an affiliated person of the other Applicant under Section 2(a)(3) of the 1940 Act and the Transfer may be deemed to entail one or more purchases or sales of securities or property between the Applicants.

4. Section 17(b) of the 1940 Act provides that, notwithstanding Section 17(a), any person may file with the Commission an application for an order exempting a proposed transaction from one or more provisions of that subsection and that the Commission shall grant such application and issue such order of exemption if evidence establishes that ''(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under [the 1940 Act]; and (3) the proposed transaction is consistent with the general purposes of [the 1940 Act].''

5. Applicants submit that the proposed Transfer would benefit the Fund. According to the Applicants, when a new series of an investment company is established, expenses usually remain relatively high and investments are limited until the asset size of the new series reaches a high enough level to support expenses and permit the necessary latitude in investment discretion. The transfer of the Separate Account's assets (valued at approximately $47.5 million as of November 1, 1996) to the Fund would avoid these problems.

6. Applicants represent that the Transfer would be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Applicants further represent that, after the Transfer, Contract owners would have interests that, in practical economic terms, do not differ in any measurable way from such interests immediately prior to the Transfer.

7. Applicants state that the Transfer would not require the liquidation of any assets of the Separate Account or Capital Company because the Transfer would take the form of an exchange of portfolio securities of the Separate Account for shares of the Fund. Because the investment policies and restrictions of the Separate Account are identical to those of the Fund, the only sale of Separate Account assets following the transfer would be those arising in the ordinary course of business. Therefore, neither the Separate Account nor Capital Company will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets, as would be the case if the Separate Account were required to liquidate its portfolio in order to purchase shares of the Fund, and the Fund, in turn, were to use such purchase proceeds for investment in portfolio securities. Nor will the Separate Account be forced to sustain losses caused by the untimely sale of one or more of its portfolio securities.

8. Applicants submit that the transfer of assets of the Separate Account to the Fund, which assets have been purchased under investment objectives, policies, and restrictions identical to those of the Fund, would be consistent with the objectives and policies of the Fund.

9. Applicants submit that the Transfer would be consistent with the general purposes of the 1940 Act by avoiding the possibility that the Fund or the Separate Account would incur unnecessary expenses or losses in connection with the Transfer.

Conclusion

For the reasons and upon the facts set forth above, the terms of the proposed Transfer, including the consideration to be paid and received, are: (a) fair and reasonable and do not involve overreaching on the part of any person concerned; (b) consistent with the policy of each registered investment company concerned, as recited in its registration statements and reports filed under the 1940 Act; and, (c) consistent with the general purposes of the 1940 Act. Accordingly, Applicants submit that the terms of the proposed Transfer meet the standards for exemption from Section 17(a) of the 1940 Act as set forth in Section 17(b) thereof.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9345 Filed 4–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Greif Bros. Corporation, Class A Common Stock, Without Par Value) File No. 1–566

April 7, 1997.

Greif Bros. Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'')

from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company is also listed on and traded through the Nasdaq National Market System. The Company wishes to eliminate the additional cost associated with having its Security listed and traded on two markets. Additionally, because of the low volume of trading in the Security on the CHX, the Company does not believe it is necessary to maintain its listing on such exchange. The Company has complied with the Rules of the CHX by filing an application to delist its Security from the CHX.

Any interested person may, on or before April 28, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–9349 Filed 4–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22600; 811–4313]

Lord Abbett California Tax-Free Income Fund, Inc.; Notice of Application

April 4, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Lord Abbett California Tax-Free Income Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 10, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 767 Fifth Avenue, New York, New York 10153.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized as a corporation under the laws of the State of Maryland. On June 1, 1985 applicant registered under the Act and filed a registration statement to register its shares under the Securities Act of 1933. Applicant's registration statement became effective on August 27, 1985, after which it commenced the initial public offering of its shares.

2. On March 14, 1996, applicant's board of directors approved the terms of an Agreement and Plan of Reorganization (the ''Agreement'') involving applicant and the California Series (the ''Acquiring Fund''), a series of another open-end investment company, Lord Abbett Tax-Free Income Fund, Inc. The Agreement provided for the transfer of all the assets of applicant in exchange for Class A shares of the Acquiring Fund and the assumption by the Acquiring Fund of all of applicant's liabilities (the ''Reorganization''). Applicant's board of directors, in accordance with rule 17a–8 under the Act, determined that the Reorganization was in applicant's best interest and would not result in any dilution to the interests of applicant's existing shareholders.

3. A registration statement on Form N–14 was filed with the SEC on March 1, 1996 and declared effective on April 24, 1996. The proxy statement/prospectus contained in such registration was furnished to applicant's shareholders on or about April 24, 1996. The shareholders of applicant approved the Reorganization with the Acquiring Fund at a meeting held on June 19, 1996.

4. On July 12, 1996, the Acquiring Fund carried out the Reorganization by acquiring applicant's assets in exchange for its Class A shares. The number of full and fractional shares of the Acquiring Fund that were issued to applicant's shareholders was determined on the basis of the relative net asset values per share and the aggregate net assets of the Acquiring Fund and applicant as of the close of business on the New York Stock Exchange on July 12, 1996. At that time, applicant had 26,886,250 shares of common stock outstanding at a net value per share of $10.28 and aggregate net assets of $276,270,190. Because the Acquiring Fund was a newly-created entity without assets, there were issued the same number of full and fractional shares of the Acquiring Fund, at the same net asset value per share, as were held by shareholders of applicant as of the close of business on July 12, 1996.

5. The total expenses incurred by applicant and the Acquiring Fund in connection with the Reorganization were approximately $66,375. Of these expenses, $64,105 were incurred by applicant. These expenses include printing expenses, solicitation expenses, legal fees, mailing expenses, audit fees and expenses, and filing fees. To the extent applicant did not pay any such expenses prior to the effective date of the Reorganization, they have been assumed by the Acquiring Fund.

6. Applicant has no assets, debts or liabilities. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant intends to file a Certificate of Dissolution with the State of Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9346 Filed 4–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22599; 811–4648]

Lord Abbett Fundamental Value Fund, Inc.; Notice of Application

April 4, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Lord Abbett Fundamental Value Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 10, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 767 Fifth Avenue, New York, New York 10153.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized as a corporation under the laws of the State of Maryland. On March 22, 1986, applicant registered under the Act and filed a registration statement to register its shares under the Securities Act of 1933. Applicant's registration statement became effective on June 30, 1986, after which it commenced the initial public offering of its shares.

2. On March 14, 1996, applicant's board of directors approved the terms of an Agreement and Plan of Reorganization (the ''Agreement'') involving applicant and the Lord Abbett Growth & Income Trust (the ''Acquiring Fund''), a series of another open-end investment company, Lord Abbett Securities Trust. The Agreement provided for the transfer of all the assets of applicant in exchange for Class A shares of the Acquiring Fund and the assumption by the Acquiring Fund of all of applicant's liabilities (the ''Reorganization''). Applicant's board of directors, in accordance with rule 17a–8 under the Act, determined that the Reorganization was in applicant's best interest and would not result in any dilution to the interest of applicant's existing shareholders.

3. A registration statement on Form N–14 was filed with the SEC on March 1, 1996 and declared effective on April 24, 1996. The proxy statement/prospectus contained in such registration was furnished to applicant's shareholders on or about April 24, 1996. The shareholders of applicant approved the Reorganization with the Acquiring Fund at a meeting held on June 19, 1996.

4. On July 12, 1996, the Acquiring Fund carried out the Reorganization by acquiring applicant's assets in exchange for its Class A shares. The number of full and fractional shares of the Acquiring Fund that were issued to applicant's shareholders was determined on the basis of the relative net asset values per share and the aggregate net assets of the Acquiring Fund and applicant as of the close of business on the New York Stock Exchange on July 12, 1996. At that time, applicant had 3,215,613 shares of common stock outstanding at a net value per share of $13.42 and aggregate net assets of $43,649,765.

5. The total expenses incurred by applicant and the Acquiring Fund in connection with the Reorganization were approximately $85,804. Of these expenses, $36,901 were incurred by applicant. These expenses include printing expenses, solicitation expenses, legal fees, mailing expenses, audit fees and expenses, and filing fees. To the extent applicant did not pay any such expenses prior to the effective date of the Reorganization, they have been assumed by the Acquiring Fund.

6. Applicant has no assets, debts or liabilities. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant intends to file a Certificate of Dissolution with the State of Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9347 Filed 4–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITY AND EXCHANGE COMMISSION

[Release No. 35–26700]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 4, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declarations(s) should submit their views in writing by April 28, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8733)

The Southern Company (''Southern''), a registered holding company, 270 Peachtree Street, N.W., Atlanta, Georgia 30303, its nonutility subsidiaries, SEI Holdings, Inc. (''Holdings''), Mobile Energy Services Holdings, Inc.,

(''Mobile''), Southern Energy, Inc. (''Energy''), Southern Energy International, Inc., Southern Energy North America, Inc. (''SENA''), and SEI Europe, Inc., each at 900 Ashwood Parkway, Atlanta, Georgia 30338, and certain of Holdings nonutility subsidiaries [1] (collectively, ''Subsidiaries''), have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(c) and 12(f) of the Act and rules 43, 46, and 54 thereunder to an application-declaration filed pursuant to sections 6(a), 7, 9(a), 10, 12(b), 12(f), 13(b). 32 and 33 of the Act and rules 43, 45 and 54 thereunder.

By orders dated February 2, 1996 (HCAR No. 26468) (the ''Original Order'') and September 26, 1996 (HCAR No. 26581), Holdings was authorized to organize and/or acquire, *inter alia*, certain non-utility businesses (defined in the Original Order as ''Energy-Related Companies'').[2] The Commission also authorized in the Original Order the issuance and sale by Mobile to Holdings of one or more series of preferred stock and the contribution of that stock ultimately to SENA (''Stock Transactions''), in connection with a proposed transfer of stock of Energy and certain of its subsidiaries to Holdings and certain of its subsidiaries.

By supplemental order dated July 17, 1996 (HCAR No. 26543) (the ''Supplemental Order''), the Commission authorized Holdings, certain Energy Related Companies [3] and other subsidiaries described in the order to pay dividends to their parent companies from time to time through June 30, 1997, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable law. In that order, the Commission also extended the date by which the Stock Transactions could be consummated, until not later than June 30, 1997. The Commission reserved jurisdiction in the Supplemental Order over the payment of dividends out of capital surplus or unearned surplus by any other type of Energy Related Company.

The applicants now request a modification and extension of their current authority to pay dividends out of capital and unearned surplus. Specifically, Holding, on its own behalf and on behalf of each of its current and future subsidiaries, requests authority to pay dividends out of capital and unearned surplus (including revaluation reserve) to their parent companies from time to time through June 30, 2000, to the extent permitted under applicable law; provided, however, that Holdings requests that the Commission reserve jurisdiction over any such dividend payments by any subsidiary of Holdings that derives any material part of its revenues from the sale of goods, services, electricity or natural gas to any of Southern's five domestic electric utility subsidiaries or to Southern Company Services, Inc.

In addition, Holdings and Mobile state that the Stock Transactions have not been consummated and may not be consummated prior to June 30, 1997. Accordingly, they now request that the Commission extend until June 30, 1998, the date by which such transactions may be consummated.

Cinergy Corp. et al. (70–9023)

Cinergy Corp. (''Cinergy''), a registered holding company, and its nonutility subsidiary, Cinergy Investments, Inc. (''Investments''), both of 139 East Fourth Street, Cincinnati, Ohio 45202, have filed a declaration under section 12(c) of the Act and rules 46 and 54 thereunder.

By previous order orders,[4] Cinergy is authorized to invest the proceeds of issuances of short-term notes and common stock to acquire interests in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs'') (EWGs and FUCOs together, ''Exempt Projects''), as defined in sections 32 and 33 of the Act, respectively, in an amount not to exceed 50% of Cinergy's ''consolidated retained earnings''.[5] To effect such investment, Cinergy, together with Investments, is authorized to form one or more direct or indirect special purpose subsidiaries (''Project Parents'') to acquire and own or operate Exempt Projects.

The applicants request authorization for Investments, three Existing Project Parents (''Midlands Project Parents'') [6] and all future Project Parents (together, with the Midlands Project Parents, ''Applicable Project Parents'') to pay dividends out of capital or unearned surplus to their respective parent companies through December 31, 2002 to the extent permitted under applicable corporate law. The applicants represent that Investments will pay dividends only to the extent that the dividend is based upon (a) a corresponding dividend paid to Investments out of capital or unearned surplus by an Applicable Project Parent that is a direct subsidiary of Investments or (b) Investments' direct or indirect ownership of an Exempt Project.

For the Commission, by the Division of Investment management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9313 Filed 4–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (62 FR 15212, March 31, 1997).

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: March 31, 1997.

CHANGE IN THE MEETING: Deletion.

The following item was not considered at the closed meeting scheduled for Thursday, April 3, 1997:

Settlement of injunctive action.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

April 9, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–9538 Filed 4–9–97; 11:24 am]

BILLING CODE 8010–01–M

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[1] As discussed below, such subsidiaries include certain current and future intermediate subsidiaries, energy-related companies, and special purpose subsidiaries.

[2] These include companies all of which revenue comes from the ownership and/or operation of the following types of businesses: (a) ''qualifying facilities'', as defined in the Public Utility Regulatory Policies Act of 1978, as amended, (''QFs''); (b) production, conversion or distribution of steam; (c) the brokering and marketing of energy commodities, and (d) other energy-related businesses to the extent the acquisition of interests in such businesses are exempt under a rule subsequently adopted by the Commission. Such a rule was adopted by the Commission on February 14, 1997 (HCAR No.. 26667), and became effective on March 24, 1997.

[3] These included companies all of whose revenue comes from the ownership and/or operation of QFs or the production, conversion or distribution of steam.

[4] *See* Holding Co. Act Rel. Nos. 26488 (March 12, 1996), 26486 (March 8, 1996) and 26477 (Feb. 23, 1996).

[5] Defined in rule 53 (a)(1)(ii).

[6] The Midlands Project Parents, formed in connection with Cinergy's acquisition of a 50% interest in Midlands Electricity plc in a joint venture with GPU, Inc. in 1996, consist of Cinergy UK, Inc., Avon Energy Partners Holdings and Avon Energy Partners Plc.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38478; File No. SR–NYSE–97–11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Requirements for Notification by Member Organizations of Participation in Distributions

April 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing a new rule, Rule 392, and an amendment to existing Rule 460 to require notification by member organizations when they are participating in an offering of securities listed on the Exchange. Proposed new language is in italics; proposed deletions are in brackets.

Notification Requirements for Offerings of Listed Securities

Rule 392. (a) A member or member organization which acts as the lead underwriter of any offering in a listed security, other than a secondary distribution pursuant to Rule 393, shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security
2. symbol
3. type of security
4. number of shares offered
5. offering price
6. date of pricing
7. time pricing
8. pricing basis (e.g., NYSE or Consolidated close)
9. beginning and ending dates of restricted period under Regulations M (if applicable)
10. syndicate members
11. firm submitting notification
12. name of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require

(b) Any Exchange member or member organization effecting a syndicate covering transaction or imposing a penalty bid in a listed security shall provide notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.

Rule 460 Specialists Participating in Contests

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Supplemetary Material

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.20 The restrictions in paragraphs (a) and .10 above shall not apply, except as provided herein, to an approved person entitled to an exemption from this Rule pursuant to Rule 98. The restriction on acquisition of 10% or more of the outstanding shares of any equity security in which an associated specialist is registered, as provided in Rule 460.10, shall apply to such approved person separate and distinct from the restriction as applied to any or all other persons specified in rule 460.10, and positions of the approved person shall not be aggregated with the positions of any one or more other persons specified in Rule 460.10. The same principle applies with respect to the reporting of positions specified in Rule 460.10. An approved person entitled to an exemption from this Rule may engage in business transactions with a company in whose stock an associated specialist is registered, may accept a finder's fee from such company, and may act as an underwriter in any capacity for a distribution of securities issued by such company. [When an approved person entitled to an exemption from this Rule is acting or has agreed to act in any underwriting capacity for a distribution of (i) any security in which an associated specialist is registered; (ii) any security which is immediately exchangeable for or convertible into a security in which an associated specialist is registered; and (iii) any security which entitles the holder thereof immediately to acquire a security in which an associated specialist is registered, the associated specialist member organization shall ''give up the book'' in the security in which a specialist member of the specialist member organization is registered to another specialist organization satisfactory to the Exchange which shall serve as a full time relief specialist until such book may, in accordance with this Rule, be reacquired by the member organization that is associated with the approved person. The period during which the member organization shall give up the book as provided above shall commence not later than the date specified in (A), (B), or (C), whichever is applicable, of Rule 10b–6(a)(3)(xi) of the Securities and Exchange Commission under the Securities Exchange Act of 1934 and shall end when the approved person has completed his participation in such distribution in accordance with paragraph (c)(3) of that Rule.]

.30(a) An approved person associated with a specialist member organization (''Affiliated Specialist'') that is entitled to an exemption from certain Exchange rules pursuant to Exchange rule 98 shall notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (b) of this rule, in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security
2. symbol
3. type of security
4. symbol of reference security or securities (if different from security being distributed
5. description of distribution or tender or exchange offer
6. distribution price or terms of tender or exchange offer
7. date of pricing
8. time of pricing
9. pricing basis (e.g., NYSE or Consolidated close)
10. beginning and ending dates of the restricted period under Regulation M (if applicable) or, for a tender or exchange offer, the date the offer is publicly announced and its expiration date
11. firm submitting notification
12. name and title of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require

(b) The notification requirements of this rule are applicable to any security in which the Affiliated Specialist is registered where such security is either:

(i) the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 10b–13 under the Securities Exchange Act of 1934; or,

(ii) a covered security as defined in Rule 100 of Regulation M.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE has prepared summaries, set forth in Sections (A), (B), and (c) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The SEC has adopted Regulation M to replace certain trading practices rules under the Securities Exchange Act of 1934 (the ''Act''). Like the rules it replaces, Regulation M proscribes certain activities that offering participants might engage in to manipulate the price of an offered security. However, the six rules adopted under Regulation M represent a streamlined and more flexible approach to regulating conduct during offerings. An essential part of this approach is reliance on surveillance conducted by self-regulatory organizations with respect to offerings of securities traded in their marketplaces.

The Exchange has surveillance procedures in place which monitor markets for various types of manipulative activity. The Exchange is proposing a new rule and an amendment to a rule to require notification by member organizations when they are participating in an offering of securities listed on the Exchange.

Rule 392 (Notification Requirements for Offerings of Listed Securities)

This rule will require notification to the Exchange whenever a member or member organization acts as a lead underwriter of any offering of a listed security. Such notification will enable the Exchange to monitor trading in the security or any related security traded on the Exchange for possible price manipulation. The data required to be transmitted to the Exchange include the name and type of the security, symbol, number of shares offered, offering price, date, time and basis of pricing, applicable restricted period and syndicate members, as well as the firm, name and telephone number of the individual submitting the notification.

Rule 392 will also require notification, effective April 1, 1997, to the Exchange of any initial syndicate covering transaction to reduce a short position created in connection with the offering, and the imposition of any penalty bid by a managing underwriter against a syndicate member that has sold any of the securities originally distributed which are subsequently purchased in a syndicate covering transaction. These notifications are required by Rule 104(h) under Regulation M.

Rule 460.30

Under Regulation M and Exchange Rule 98, specialist organizations associated with an underwriter of their specialty stock will not have to ''give-up-the-book'' during distributions of such stocks if they have functional separation procedures in place approved by the Exchange. Rule 460.20 is being amended accordingly to reflect this change. However, when such an underwriter is engaged in a distribution of a specialty stock, the Exchange will conduct specific types of surveillance on trading in the security by the specialist and associated underwriter to monitor for possible manipulation of the stock. These surveillance procedures were designed when the Exchange received no-action relief from Rules 10b–6 and 10b–13 under the Act from the requirement for specialists to ''give up the book'' during participation in a distribution of a specialty stock by an affiliated broker-dealer, and are being carried forward under Regulation M.

Rule 460.30 will require notification to the Exchange, the earlier of two business days prior to pricing the offering or one business day prior to the commencement of the restricted period for a distribution participant as defined in Rule 100 under Regulation M, whenever an approved person associated with a specialist member organization (''Affiliated Specialist'') that has a functional separation approved pursuant to Rule 98 participates in the distribution of a security in which the Affiliated Specialist is registered. With respect to tender or exchange offers, notification must be made to the Exchange prior to the commencement of the Rule 10b–13 covered period, i.e., from the time the offer is publicly announced until its expiration. The data elements required are similar to those in Rule 392.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with provisions of Section 6(b)(5) of the Act [1] in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 2, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NYSE's proposal is consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act which requires that an exchange have rules that are designed to

[1] 15 U.S.C. § 78f(b)(5) (1988).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Commission believes the Exchange's policy requiring notification by member organizations when they are participating in an offering of securities listed on the Exchange will facilitate compliance of Exchange members with the requirements of Regulation M, SEC Rules 100 through 105, and Rule 10b–13 under the Act. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register.**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[2] that the proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9348 Filed 4–10–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The Information Collection(s) Listed Below Require(s) Extension(s) of the Current OMB Approval(s) or Are Proposed New Collection(s)

1. Certification by Religious Group—0960–0093. The information collected by the Social Security Administration on form SSA–1458 is used to determine if the religious group of which an individual is a member qualifies for a self-employment tax exemption under Section 1402(g) of the Internal Revenue Code. The respondents are spokespersons for religious groups.

Number of Respondents: 180.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 45 hours.

2. RSI/DI Quality Review Case Analysis Questionnaires and Annual Earnings Test Questionnaire—0960–0189. The information collected on forms SSA–2930, SSA–2931 and SSA–2932 is used by the Social Security Administration to establish a national payment accuracy rate for all cases in payment status and to serve as a source of information regarding problem areas in the Retirement and Survivors Insurance (RSI) program and Disability Insurance (DI) programs. The information is also used to measure the accuracy rate for newly adjudicated RSI/DI cases. The information collected on form SSA–4659 is used to evaluate the annual earnings test (AET) process to determine the effectiveness of the AET process. The results will be used to develop ongoing improvements in the process. The respondents are RSI and DI beneficiaries.

	SSA–2930	SSA–2931	SSA–2932	SSA–4659
Number of Respondents	5,500	2,750	1,375	740
Frequency of Response	1	1	1	1
Average Burden Per Response (minutes)	20	30	30	20
Estimated Annual Burden (hours)	1,833	1,375	688	247

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address:

Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The Information Collection(s) Listed Below Have Been Submitted to OMB

1. Appointment of Representative—0960–0527. The information collected on form SSA–1696 is used by the Social Security Administration to verify the applicant's appointment of a representative. It allows SSA to inform the representative of items which affect the applicant's claim. The respondents are applicants who notify SSA that they have appointed a person to represent them and such representatives when claiming a right or benefit.

Number of Respondents: 475,737.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 72,290 hours.

2. Information About Joint Checking/Savings Account—0960-0461. The information collected on form SSA–2574 by the Social Security Administration is used to determine whether a joint bank account should be counted as a resource of an SSI claimant or applicant in determining eligibility for SSI. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants/recipients.

Number of Respondents: 200,000

Frequency of Response: 1

Average Burden Per Response: 7 minutes

Estimated Annual Burden: 23,333 hours

3. Social Security Non-Applicant, Applicant and Advisor Surveys on the Supplemental Security Income and Social Security Disability Programs—0960–NEW. SSA will conduct a pilot study to obtain information on the factors that motivate individuals to file for disability benefits. The purpose of this project is to provide SSA with an appropriate methodology to conduct a scientific survey of disability applicants, non-applicants and disability advisors to determine the types and sources of

[2] 15 U.S.C. § 78s(b)(2) (1988).

[3] 17 CFR 200.30–3(a)(12) (1996).

information that disabled and impaired individuals utilize in making their decisions to apply or not to apply for benefits. The data will be used to determine the appropriateness and accuracy of the information provided to potential applicants and to identify the social networks through which information about the disability programs is disseminated.

	Screener survey	Pilot survey
Number of Respondents	1,000	200
Frequency of Response	1	1
Average Burden Per Response (minutes)	12	60
Estimated Annual Burden (hours)	200	200

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven,New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA), Social Security Administration, DCFAM, Attn: Judith T. Hasche, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4123 or write to her at the address listed above.

Dated: April 3, 1997.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–8989 Filed 4–8–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Naples Municipal Airport; Naples, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised current and future noise exposure maps submitted by the City of Naples, Florida for Naples Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed revised noise compatibility program that was submitted for Naples Municipal Airport under Part 150 in conjunction with the noise exposure maps, and that this revised program will be approved or disapproved on or before September 29, 1997.

EFFECTIVE DATE: The effective date of the FAA's determination on the revised noise exposure maps and of the start of its review of the associated revised noise compatibility program is April 2, 1997. The public comment period ends June 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Comments on the proposed revised noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised noise exposure maps submitted for Naples Municipal Airport are in compliance with applicable requirements of Part 150, effective April 2, 1997. Further, FAA is reviewing a proposed revised noise compatibility program for that airport which will be approved or disapproved on or before September 29, 1997. This notice also announces the availability of this revised program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Naples, Florida, submitted to the FAA on February 13, 1997, revised noise exposure maps, descriptions and other documentation which were produced during the Naples Municipal Airport FAR Part 150 Revised program conducted between March 23, 1995 and February 13, 1997. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the revised noise exposure maps and related descriptions submitted by the City of Naples, Florida. The specific maps under consideration are ''1996 Existing Conditions Noise Exposure Map'' and ''2001 Forecast Conditions Revised Noise Exposure Map'' in the Revised Noise Compatibility Program 1996 submission. The FAA has determined that these maps for Naples Municipal Airport are in compliance with applicable requirements. This determination is effective on April 2, 1997. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours

onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the revised noise compatibility program 1996 for Naples Municipal Airport, also effective on April 2, 1997. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the revised program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 29, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed revised program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the revised noise exposure maps, the FAA's evaluation of the maps, and the proposed revised noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, and

Naples Airport Authority, 160 Aviation Drive North, Naples, Florida 34104

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, April 2, 1997.

Charles E. Blair,

Manager, Orlando Airport District Office.

[FR Doc. 97–9418 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Tuscaloosa County, AL

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Tuscaloosa County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117, Telephone: (334) 223–7370, or Mr. Jimmy Butts, Director, State of Alabama Department of Transportation, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (334) 242–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Department of Transportation, will prepare an Environmental Impact Statement for a proposed bypass of the cities of Northport and Tuscaloosa, approximately 29 km (18 miles) in length, beginning at U.S. Highway 82 west and extending north and east around Northport and Tuscaloosa. The proposed limited access multi-lane facility provides a much-needed new crossing of the Black Warrior River that runs generally east and west through the metropolitan area. There are presently two routes serving the Northport/Tuscaloosa area that cross the Black Warrior River. Both of these facilities have become severely congested creating the need for additional river crossings. The area has experienced steady growth, and an additional highway corridor will better serve this rapidly-developing area as well as provide through traffic with an option to bypass the existing overburdened highway network.

A Notice of Intent was previously published on September 17, 1992, to prepare an Environmental Impact Statement for this project. Early coordination letters describing the proposed action and soliciting comments were sent to appropriate Federal, State, local agencies, and to private organizations and citizens who had expressed or were known to have an interest in the proposal. A scoping meeting, four public involvement meetings, and public hearings were held to describe the project and solicit public/private input. After these meetings, hearings, and consideration of comments, the location of a river crossing was selected and a FONSI approved on January 14, 1994, for a separate project within the overall limits of the bypass for construction of a bridge across the river. Funding to begin bridge construction was provided in the Intermodal Surface Transportation Efficiency Act of 1991.

A Draft Environmental Impact Statement (FHWA–AL–EIS–94–01–D) for the bypass, which also included discussion of the river crossing project, was approved on June 1, 1994. After circulation of the Draft Environmental Impact Statement and holding a corridor public hearing, comments and objections to the alignment north of the river were raised by residents of a subdivision near the proposed location. In order to ensure that there was full public knowledge of the proposed project and to clarify apparent confusion by some citizens, an additional Notice of Intent was published in 1996 to prepare a Supplemental Draft Environmental Impact Statement for the entire route. The Supplemental Draft Environmental Impact Statement was prepared on the entire route and subsequently approved on June 10, 1996. This document was circulated, and a corridor public hearing was held. Once again, objections were raised, and many of the comments concerning the outdated data indicated the need to prepare a new Environmental Impact Statement, based on current issues and conditions rather than trying to utilize information from the previous Environmental Impact Statement and Supplemental Environmental Impact Statement.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A scoping meeting and public involvement meeting will be held in the project area. In addition, a public hearing will be held. Public notices will be given of the time and place of meetings and hearing. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Environmental Impact Statement should be directed to

the FHWA at the address provided above.

Catalog of Federal Domestic Assistance 20.205, Highway Planning and Construction.

Issued on: April 1, 1997.

Joe D. Wilkerson,

Division Administrator, Federal Highway Administration, Montgomery, Alabama.

[FR Doc. 97–9304 Filed 4–10–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33377]

Coach USA, Inc.—Control Exemption—Airport Bus of Bakersfield; Antelope Valley Bus, Inc., Desert Stage Lines, Inc.; Bayou City Coaches, Inc.; Kerrville Bus Company, Inc.; Red & Tan Charter, Inc.; Red & Tan Tours, Inc.; and Rockland Coaches, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of petition for exemption.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier that controls 15 motor passenger carriers, seeks to be exempted, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5), to acquire control of eight other motor passenger carriers.

DATES: Comments must be filed by May 1, 1997. Petitioner may file a reply by May 5, 1997.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 33377 to: Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, D.C. 20423–0001. Also send one copy of comments to petitioner's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach seeks an exemption to acquire stock control over eight motor passenger carriers that operate in interstate and intrastate commerce: Airport Bus of Bakersfield (MC–163191) (primarily charter operations and regular-route service in California and Nevada); Antelope Valley Bus, Inc. (MC–125057) (primarily charter operations and regular-route service in California and Nevada); Desert Stage Lines, Inc. (MC–140919) (primarily charter operations in California); Bayou City Coaches, Inc. (MC–245246) (primarily charter operations in Texas and New Mexico); Kerrville Bus Company, Inc. (MC–27530) (primarily charter operations and regular-route service in Texas, Louisiana, and Arkansas); Red & Tan Charter, Inc. (MC–204842) (holds authority to operate charter and special services, but does not presently conduct any bus operations); Red & Tan Tours, Inc. (MC–162174) (primarily charter operations and regular-route service in New York and New Jersey); and Rockland Coaches, Inc. (MC–29890) (primarily charter operations and regular-route service in New York and New Jersey).[1] Antelope Valley Bus, Inc. operates Airport Bus of Bakersfield as a division and wholly owns Desert Stage Lines, Inc. Red & Tan Tours, Inc., Red & Tan Charter, Inc., and Rockland Coaches, Inc. are also under common control. Bayou City Coaches, Inc. and Kerrville Bus Company, Inc. are controlled by different members of the same family. Coach states that each of the eight carriers accounts for a relatively small market share and operates regionally in diverse markets across the United States.

Coach indicates that it currently controls the nation's second largest group of motor passenger carriers, having acquired 10 carriers in May 1996,[2] and five more in November 1996.[3] In STB Finance Docket No. 33343, which is pending before the Board, petitioner is seeking to acquire control of four other motor passenger carriers.[4]

Petitioner asserts that there is little competition, and no significant overlap in operations, among the 15 carriers it now controls and the carriers it seeks to control in this proceeding and in STB Finance Docket No. 33343. Coach acknowledges that there is some overlap in service but states that the proposed acquisitions will have no meaningful effect on the continued availability of competitive transportation.

Following the acquisition of control by Coach, the eight carriers will continue to operate in their respective markets, each under its own name and each in the same basic manner as before. Coach claims that improved service at lower costs will result because of the coordination of functions, centralized management, financial support, rationalization of resources, and economies of scale that are anticipated from the common control. Coach also states that all collective bargaining agreements will be honored, that employee benefits will improve, and that no change in management personnel is planned. Additional information may be obtained from petitioner's representatives.

Coach also requests expedited action by the Board on its petition for exemption filed in this proceeding and in STB Finance Docket No. 33343. Coach explains that there will be a stock, and possibly a debt, offering in May 1997 and asks that the Board issue a decision in both proceedings by May 15, 1997.

A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20530.

Decided: April 4, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–9363 Filed 4–10–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The stock of these eight motor passenger carriers was placed in separate, independent voting trusts with different trustees to avoid any unlawful control.

[2] *See Notre Capital Ventures II, LLC and Coach USA, Inc.—Control Exemption—Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp.*, STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996).

[3] *See Coach USA, Inc.—Control Exemption—American Sightseeing Tours, Inc.; California Charters, Inc.; Texas Bus Lines, Inc.; Gulf Coast Transportation, Inc.; and K–T Contract Services, Inc.*, STB Finance Docket No. 33073 (STB served Nov. 8, 1996).

[4] *Coach USA, Inc.—Control Exemption—Progressive Transportation, Inc.; Powder River Transportation Services, Inc.; Worthen Van Service, Inc.; and PCSTC, Inc.*, STB Finance Docket No. 33343 (STB served and published Mar. 12, 1997) (62 FR 11518).

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–28]

Revocation of Customs Broker License

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

ACTION: Broker license revocation.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker license with prejudice.

Port	Individual	License No.
Portland, Maine	Arthur Anderson	6891

Dated: April 8, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–9353 Filed 4–10–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–24]

Revocation of Customs Broker License

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

ACTION: Broker license revocation.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker license without prejudice.

Port	Individual	License No.
New York	Joss International	14064
New York	Carlsson International Cargo, Inc	12727

Dated: April 8, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–9352 Filed 4–10–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–27]

Revocation of Customs Broker License

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

ACTION: Broker license revocation.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker licenses without prejudice.

Port	Individual	License No.
Seattle	Charles Klingforth	5519
Seattle	Marilyn Jill Michel	6441
Pembina	J. W. Kramer	2489
Pembina	Frank Moll	11759
New York	J & A Shipping Co., Inc	4780

Dated: April 8, 1997

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–9355 Filed 4–10–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–25]

Revocation of Customs Broker License

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

ACTION: Broker license revocation.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker license without prejudice.

Port	Individual	License No.
New York	N.Y. Redbird, Inc	3899
New York	Meadows Wye Cardinal Air Services	5324
New York	Roberts, Reilly & Son, Inc	03292

Dated: April 8, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–9354 Filed 4–10–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–26]

Revocation of Customs Broker License

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

ACTION: Broker license revocation.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), canceled the following Customs broker license without prejudice.

Port	Individual	License No.
Great Falls	Charles M. Schayer, Sr	2167

Dated: April 8, 1997.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 97–9351 Filed 4–10–97; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting at the Hotel Sofitel Miami, 5800 Blue Lagoon Drive, Miami, Florida on Friday, April 11, 1997, at 10:30 a.m.

The intended agenda is listed below.

Advisory Board for Cuba Broadcasting Meeting

Friday, April 11, 1997

Agenda

Part One—Closed to the Public

I. Technical Operations Update
  A. Status Report of UHF
  B. Capital Improvement Line Item
  1. Aerostat
  2. Marathon
  3. Computers: Digital, Internet Capabilities
II. Approval of Minutes

Part Two—Open to the Public

I. Appointments/Commendations
II. Radio Marti Update
  A. Funding Needs
  B. Relocation
  C. Programming
  D. Grantee Status
III. TV Marti Update
IV. Office of Program Evaluation Update
V. Congressional Update
VI. Office of Inspector General Report
VII. Arbitration Report
VIII. Old Business
IX. New Business

Members of the public interested in attending the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (305) 994–1784.

Determination To Close a Portion of the Advisory Board Meeting of April 11, 1997

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 10:30 a.m. to 11:15 a.m. portion of this meeting should be closed to the public.

The Advisory Board has requested that part one of the April 11, 1997, meeting be closed to the public. Part one will involve information the premature disclosure of which would likely frustrate implementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Part one of the agenda consists of a discussion of technical matters, which include TV Marti transmissions, frequencies, alternate channels and new technologies for Radio Martí.

Dated: April 7, 1997.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 97–9397 Filed 4–10–97; 8:45 am]

BILLING CODE 8230–01–M

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Record of Decision on the Wasatch County Water Efficiency Project and Daniel Replacement Project Final Environmental Impact Statement

AGENCY: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

ACTION: Notice of availability of the Record of Decision (ROD).

SUMMARY: On March 12, 1997, Don A. Christiansen, Chairman of the Utah Reclamation Mitigation and Conservation Commission signed the Record of Decision (ROD) which documents the selection of the Proposed Action Alternative as presented in the Wasatch County Water Efficiency Project and Daniel Replacement Project (WCWEP and DRP) Final Environmental Impact Statement (FEIS), INT FES 96–58, filed November 22, 1996, and as described in the WCWEP Feasibility Study dated January 1997. The ROD also approves the Central Utah Water Conservancy District (CUWCD) proceeding with construction of WCWEP and DRP, in accordance with statutory and contractual obligations. Construction of WCWEP will conserve water from the Central Utah Project agricultural supply for Wasatch County and provide it as replacement water for the water presently being diverted from the Strawberry River basin by the Daniel Irrigation Company (DIC). Restoration of natural stream flows to the Strawberry River basin constitutes more than one-fourth of the aquatic mitigation required for the Strawberry Aqueduct and Collection System of the Central Utah Project. The replacement supply will be delivered by means of the DRP.

The FEIS for WCWEP and DRP considered three alternatives to restore flows in the upper Strawberry River and to provide water and water conveyance facilities from Jordanelle Reservoir to the existing DIC water storage facilities as mandated in section 303 of the Central Utah Project Completion Act (CUPCA) and a No Action Alternative. The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), the Department of the Interior (Interior), and the CUWCD served as the Joint Lead Agencies in the preparation of the NEPA compliance documents.

In addition to satisfying the requirements and authorizations of CUPCA, the construction of the WCWEP and DRP will satisfy the environmental commitment made in the U.S. Bureau of Reclamation's 1990 Final Supplement to

the Final Environmental Impact Statement, Diamond Fork System, and now binding upon the Mitigation Commission, to restore flows in the upper Strawberry River that have been historically diverted by the DIC, and to provide the mandated replacement water supply. Of principal significance, the selected alternative will fulfill the mandates of CUPCA and the environmental commitment by: improving the efficiency of delivering CUP agricultural and municipal and industrial water stored in Jordanelle Reservoir; conserving water and improving water management in the Heber Valley; supplementing instream flows in some Heber Valley streams; protecting the water rights of downstream users; and minimizing adverse impacts on groundwater, wetlands and other environmental resources.

During preparation of the FEIS, CUWCD consulted formally on listed species with the U.S. Fish and Wildlife Service (FWS) under § 7 of the Endangered Species Act (16 U.S.C.A. sections 1531 to 1544, as amended). In a letter dated January 14, 1997, the FWS indicated that the Proposed Action Alternative selected by this ROD is not likely to adversely affect listed or proposed species or designated or proposed critical habitats. CUWCD, the Mitigation Commission and Interior will continue to consult with FWS prior to and during construction to avoid actions that may affect proposed or listed species or their proposed or designated critical habitats.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Mark Holden, Program Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84601, Telephone: (801) 524–3146.

Dated: April 3, 1997.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 97–9311 Filed 4–10–97; 8:45 am]

BILLING CODE 4310–05–P

federal register

Friday
April 11, 1997

Part II

Environmental Protection Agency

40 CFR Parts 700, 720, 721, 723, and 725
Microbial Products of Biotechnology; Final Regulation Under the Toxic Substances Control Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 700, 720, 721, 723, and 725

[OPPTS–00049C; FRL–5577–2]

RIN 2070-AB61

Microbial Products of Biotechnology; Final Regulation Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating this final rule under section 5 of the Toxic Substances Control Act (TSCA), 15 U.S.C 2604, to establish notification procedures for review of certain new microorganisms before they are introduced into commerce. ''New'' microorganisms are those formed by deliberate combinations of genetic material from organisms classified in different taxonomic genera. This review process is designed to prevent unreasonable risk of injury to human health and the environment without imposing unnecessary regulatory burdens on the biotechnology industry. This final rule describes notification procedures and the microorganisms that would be exempt from notification.

DATES: This rule will become effective June 10, 1997. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight savings time on April 27, 1997.

FOR FURTHER INFORMATION CONTACT: For general information including copies of this document and related materials: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404), TDD: (202-554-0551), e-mail address: TSCA-Hotline@epamail.epa.gov.

For technical information regarding this document: David Giamporcaro, Office of Pollution Prevention and Toxics (7405), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202-260-6362).

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and various support documents are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/). The final rule may also be accessed at the Office of Pollution Prevention and Toxics Biotechnology home page at http://www.epa.gov/opptintr/biotech/. Fax-On-Demand: Using a faxphone call 202–401–0527 and select item 3100 for an index of available material and corresponding item numbers related to this document.

This rule establishes procedures for the premanufacture review of certain new microbial products of biotechnology that are comparable to those for traditional chemical substances but are tailored to address the specific characteristics of these microorganisms. EPA published its final TSCA section 5 premanufacture notification (PMN) rule (40 CFR part 720) on May 13, 1983 (48 FR 21722) and subsequently amended certain parts of the rule on September 13, 1983 (48 FR 41132), April 22, 1986 (51 FR 15096), and March 29, 1995 (60 FR 16298) (FRL–4921–8). In 1984, EPA discussed how the PMN rule could be applied to microorganisms in ''Proposed Policy Regarding Certain Microbial Products'' which was published as part of the Federal ''Proposal for a Coordinated Framework for Regulation of Biotechnology; Notice'' (''1984 Proposed Policy Statement'') which was published by the Office of Science and Technology Policy (OSTP) on December 31, 1984 (49 FR 50856). In 1986, EPA stated how the PMN rule would be applied to microorganisms in the ''Statement of Policy: Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and Toxic Substances Control Act'' (''1986 Policy Statement''), which was published as part of the Federal ''Coordinated Framework for Regulation of Biotechnology; Announcement of Policy and Notice for Public Comment'' which was published by OSTP on June 26, 1986 (51 FR 23302). On September 1, 1994, EPA published the proposed rule, ''Microbial Products of Biotechnology; Proposed Regulation Under the Toxic Substances Control Act,'' which would, when finalized, fully implement its program for microorganisms under TSCA section 5 (59 FR 45526) (FRL–4778–4). While general background information is presented here, readers should also consult the preambles of those documents for further information on the development of the biotechnology program under TSCA section 5.

Regulated Entities. Potentially regulated entities are persons conducting commercial research and development activities or persons manufacturing, importing, or processing for commercial purposes intergeneric microorganisms used for a TSCA purpose. Regulated categories and entities include:

Category	Examples of Regulated Entities
Biotechnology research and development activities involving commercial funds	Persons conducting commercial research using intergeneric microorganisms for biofertilizers; biosensors; biotechnology reagents; commodity or specialty chemical production; energy applications; waste treatment or pollutant degradation; and other TSCA subject uses.
Commercial biotechnology products	Persons manufacturing, importing or processing products for commercial purposes intergeneric microorganisms for biofertilizers; biosensors; biotechnology reagents; commodity or specialty chemical production; energy applications; waste treatment or pollutant degradation; and other TSCA subject uses.

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 intergeneric microorganism is regulated by this action, you should carefully examine the list of substances excluded by TSCA section (3)(2)(B), and the requirements for ''persons who must report'' in § 725.205 of the regulatory text for research and development activities using intergeneric microorganisms and § 725.105 of the

regulatory text for manufacturing, importing, and processing intergeneric microorganisms. 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 UNIT.**

I. Background

A. Statutory Authority

TSCA section 5(a)(1) requires that persons notify EPA at least 90 days before they manufacture or import for commercial purposes a ''new'' chemical substance or manufacture, import, or process a chemical substance for a ''significant new use.'' TSCA defines ''chemical substance'' broadly and in terms which cover microorganisms as well as traditional chemicals. Therefore, for the purposes of TSCA, a ''new microorganism,'' like a ''new chemical substance,'' is one that is not listed on the TSCA Chemical Substances Inventory compiled under TSCA section 8(b). TSCA section 5(h)(3) exempts the manufacture or importation of small quantities of chemical substances produced solely for research and development (R&D) from the section 5 notification requirements if the manufacturer or importer notifies persons engaged in R&D of any health risks that the company or EPA has reason to believe may be associated with the chemical substance. TSCA section 5(h)(3) authorizes EPA to define by rule what constitutes small quantities and to prescribe the form and manner of risk notification. TSCA section 5(h)(4) authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of section 5, if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance will not present an unreasonable risk of injury to human health or the environment.

B. History

This rule implements EPA's program for oversight of microorganisms, in accordance with the 1986 Policy Statement. Since its publication, EPA has been operating its biotechnology program under the 1986 Policy Statement. Prior to the 1986 Policy Statement, EPA issued the 1984 Proposed Policy Statement. Subsequent to the 1986 Policy Statement, EPA issued a notice, entitled ''Biotechnology; Request for Comment on Regulatory Approach'' on February 15, 1989 (54 FR 7027), in order to solicit comments on the direction of EPA's biotechnology program under TSCA. Comments on the 1984 and 1986 documents and the February 15, 1989 **Federal Register** notice are addressed, as appropriate, in this preamble.

On September 7, 1990, EPA convened a subcommittee of its Biotechnology Science Advisory Committee (Subcommittee on Implementation of Scope) to comment on topics associated with the proposed rule. EPA again convened a subcommittee, the Subcommittee on the Proposed Biotechnology Rule under TSCA, which met on July 22, 1991. Advice from both of these subcommittees was incorporated as appropriate in the preamble to the proposed rules, and summaries of subcommittee deliberations were placed in the docket for this rulemaking. On September 1, 1994, EPA published the proposed rules ''Microbial Products of Biotechnology; Proposed Regulation Under the Toxic Substances Control Act'' (59 FR 45526). The final rule announced today is intended to describe implementation of EPA's program for regulation of microorganisms under TSCA.

II. Summary of Proposed Rule

EPA proposed to establish a new part 725 of Title 40 of the Code of Federal Regulations (CFR). EPA believed that consolidating all requirements and procedures applicable to new microorganisms into one part of the CFR was appropriate and justified because of the specific characteristics of microorganisms. The consolidation was expected to benefit the public by providing greater focus and enhanced clarity. Part 725 is devoted exclusively to the review of microorganisms under section 5 of TSCA and is divided into eight subparts. Subparts A, B, and C consolidated provisions primarily adapted from parts 720 and 721. Subpart A, which includes definitions that are applicable throughout part 725, described general provisions and applicability. Subpart B described administrative procedures that are applicable to all submissions under part 725. Subpart C described confidentiality provisions that are applicable to all submissions under part 725.

Subpart D, which combined the general PMN and significant new use notice (SNUN) requirements adapted from parts 720 and 721, described the reporting requirements and review process pertaining to microbial commercial activity notices (MCANs). Subparts E, F, and G described the reporting requirements and review processes for applications for exemptions from full MCAN reporting. Subpart E, which was almost entirely new, described a new reporting process using the TSCA experimental release application (TERA) which was developed for reporting research and development (R&D) activities involving release to the environment. Subpart E also described who would be eligible to submit a TERA or receive a TERA list exemption, and the criteria that must be met to receive an exemption from EPA review for certain types of R&D activities. Subpart F, which was an adaptation of § 720.38, described the requirements for a test marketing exemption for microorganisms. Subpart G, which was entirely new, described the criteria that must be met in order to qualify for Tier I or Tier II exemptions for certain microorganisms in general commercial use. Subpart L, which was adapted from part 721, described additional procedures for reporting significant new uses of microorganisms. Although significant new use rules were not being proposed, it was intended that subpart M would list microorganisms and specific significant new uses when they were promulgated.

In addition, EPA proposed to amend existing regulations regarding the collection of fees from submitters of notices under section 5 of TSCA (40 CFR part 700), to reflect the fee structure for the notices and applications that have been developed by these proposed rules. Additional amendments to parts 720, 721, and 723 were proposed to consolidate TSCA section 5 review of microorganisms into part 725.

III. Summary of Final Rule

This final rule establishes all reporting requirements under section 5 of TSCA for manufacturers and processors of microorganisms subject to TSCA jurisdiction, that are manufactured for commercial purposes, including research and development for commercial purposes. The rule establishes a number of mechanisms for reporting to EPA, including a number of specific exemptions. Most of the exemptions create an alternative mechanism for reporting to EPA that reduces the amount of information to be reported. Certain of the research and development exemptions establish the conditions under which no reporting would be required.

Manufacturers are required to report certain information to EPA 90 days before commencing the manufacture of intergeneric microorganisms that are not listed on the TSCA Inventory. The rule establishes the mechanism for reporting this information. The rule also defines ''small quantities for research and development'' for microorganisms; the effect of which is to require section 5

reporting for certain research and development activities.

Any manufacturer, importer, or processor of a living microorganism, who is required to report under section 5 of TSCA must file a Microbial Commercial Activity Notice (MCAN) with EPA, unless the activity is eligible for one of the specific exemptions. The general procedures for filing MCANs are described in subpart D of part 725 of the regulatory text.

TSCA section 5 only applies to microorganisms that are manufactured, imported, or processed for commercial purposes. EPA has defined manufacture or process for commercial purposes as ''manufacture or process for purposes of obtaining an immediate or eventual commercial advantage.'' Whether an activity has an immediate or eventual commercial advantage is determined by indicia of commercial intent. Research and development activities are for commercial purposes, and thus subject to reporting, if tests are directly funded, in whole or in part by a commercial entity, when the researcher considers there to be an immediate or eventual commercial advantage. In addition, all post R&D activities are considered manufacture or processing for a commercial purpose.

EPA has established two exemptions for new microorganisms, after the R&D development stage, which are being manufactured for introduction into commerce. In the Tier I exemption, if three criteria are met, manufacturers are only required to notify EPA that they are manufacturing a new microorganism that qualifies for this exemption 10 days before commencing manufacture, and to keep certain records. A manufacturer is not required to wait for EPA approval before commencing manufacture. To qualify for the Tier I exemption, a manufacturer must use one of the listed recipient organisms and must implement specific physical containment and control technologies. In addition, the DNA introduced into the recipient microorganism must be well-characterized, limited in size, poorly mobilizable, and free of certain sequences.

A manufacturer, who otherwise meets the conditions of the Tier I exemption, may modify the specified containment restrictions, but must submit a Tier II exemption notice. The Tier II exemption requires manufacturers to submit an abbreviated notice describing the modified containment, and provides for a 45–day period, during which EPA would review the proposed containment. The manufacturer may not proceed under this exemption until EPA approves the exemption.

Rather than submitting a MCAN during research and development, manufacturers may qualify for one of several exemptions, or may choose to submit to EPA a TSCA Experimental Release Application.

If a manufacturer is conducting research and development activities solely within a contained structure, the research may qualify for one of two exemptions. For contained research conducted by researchers who are required to comply with the NIH guidelines, EPA has established a complete exemption from EPA review and reporting and recordkeeping requirements. For all other manufacturers conducting contained research and development activities EPA has established a more limited exemption. The exemption specifies factors which the technically qualified individual must consider in selecting the appropriate containment. The manufacturer is required to keep records to document compliance with the containment requirements, but is exempt from all other TSCA section 5 reporting requirements. See Unit V.C.5. of this preamble.

For researchers conducting small-scale field tests with *Bradyrhizobium japonicum* and *Rhizobium meliloti*, the final rule creates an exemption from EPA review, providing certain conditions are met. The field testing must occur on no more than 10 terrestrial acres; the introduced genetic material must comply with certain restrictions, and appropriate containment measures must be selected to limit dissemination.

If a manufacturer does not meet the requirements for one of the exemptions discussed above, he or she may submit a TERA. The TERA is essentially an abbreviated MCAN submission for individual tests. EPA's review period is reduced to 60 days, although EPA may extend the period for good cause. EPA must approve the test before the researcher may proceed, even if the 60-day period expires. EPA's approval is limited to the conditions outlined in the TERA notice or approval.

In addition, a manufacturer may submit a MCAN for any R&D activity. However, EPA expects that most researchers will instead choose to submit a TERA. In addition to the longer review period, EPA expects that, because of the limited information at the R&D stage, the Agency would likely issue a section 5(e) order to impose conditions to address the uncertainties, which would need to be modified each time the manufacturer wanted to vary the terms of the order.

IV. Summary of Major Changes in Final Rule

The final rule adopts the provisions of the proposed rule with few revisions. EPA is adding to 40 CFR a new part 725, which applies TSCA section 5 requirements specifically to microorganisms. Subpart A of part 725 contains general provisions and applicability. The final rule retains from the proposal the definition of ''new microorganisms'' that are subject to TSCA section 5 reporting. ''New microorganisms'' are intergeneric microorganisms that are not already listed on the TSCA Inventory. ''Intergeneric microorganism'' is defined at § 725.3. EPA has made some minor revisions to definitions in § 725.3 related to scope of oversight.

Subpart B of part 725 contains administrative procedures that have been adapted with little change from provisions in 40 CFR parts 720 and 721. The provisions in the final rule have been adopted with minor changes from those proposed in 1994.

Subpart C of part 725 contains requirements for claiming confidential business information (CBI). These requirements, which were adapted from provisions in part 720, have not been changed from the proposal, with the exception of the requirement relating to CBI claims in the TERA and other minor changes. Section 725.94(a)(2) has been modified to eliminate the proposed requirement for upfront substantiation of CBI claims in the TERA submission.

Subpart D establishes the reporting program for new microorganisms manufactured or imported for distribution into commerce and requires submission of a MCAN 90 days prior to initiating manufacture or import of the new microorganism. This subpart codifies the requirements for information to be included in the MCAN at §§ 725.155 and 725.160 and is promulgated with minor changes from the proposal.

Subpart E establishes the exemptions from full MCAN reporting for R&D activities. At § 725.205(b), EPA defines ''commercial purposes'' for R&D activities to include all R&D directly funded in whole or in part by a commercial entity, and all R&D activities, regardless of funding source, for which the researcher intends to pursue immediate or eventual commercial advantage.

Subpart E establishes, at § 725.232, a complete exemption from TSCA section 5 obligations for certain R&D activities conducted in contained structures and subject to regulation by another Federal agency. EPA establishes another

exemption from reporting requirements for R&D activities in contained structures which meet the requirements of §§ 725.234 and 725.235.

Subpart E also establishes at §§ 725.238 and 725.239 the TERA exemption process for R&D activities, primarily those involving intentional environmental release. EPA has revised requirements in § 725.239 to limit the antibiotic resistance markers that may be used in the microorganisms eligible for the TERA exemption.

Subpart E codifies the requirements for information that must be included in the TERA at §§ 725.255 and 725.260, and is promulgated with minor changes from the proposal. EPA has revised the requirements at §§ 725.238(b)(3)(ii) and 725.255(e)(1)(vi) with regard to notification of State and/or local authorities.

Subpart F contains the requirements for exemptions for test marketing activities. These requirements have been adapted, with little change, from provisions in part 720 and have only minor changes from the 1994 proposed rule.

Subpart G establishes an exemption from MCAN reporting for certain microorganisms and places requirements on the recipient microorganism, the introduced genetic material, and the physical containment. Some changes have been made to requirements for specific eligibility criteria since the proposal. Section 725.421 contains the requirements for the introduced genetic material. Minor changes have been made to § 725.421(d) to clarify the functional portions of toxin-encoding sequences that cannot be included in the introduced genetic material. Section 725.422 contains the requirements for physical containment. Section 725.422(b) has been revised to require controlled access to the structure. Section 725.422(e) has been modified to require submitters to document the effectiveness of the features used to minimize the microbial concentrations in aerosols and exhaust gases released from the structure.

Subpart L establishes procedures for reporting significant new uses of microorganisms. These requirements have been adapted, with little change, from provisions in part 721 and have only minor changes since they were proposed in 1994.

Subpart M is reserved for requirements for significant new uses for specific microorganisms; however, none are being promulgated in this rule.

The regulatory text also amends existing regulations regarding the collection of fees from submitters of notices under section 5 of TSCA (40 CFR part 700), to reflect the fee structure for the notices and applications that have been developed by this rule. Additional amendments to parts 720, 721, and 723 consolidate TSCA section 5 review of microorganisms into part 725.

V. Discussion of Final Rule and Response to Comments

In response to the proposed rule, EPA received 40 letters from the public during the comment period. Comments were received from industry, academia, professional and trade associations, government agencies, public interest groups, and individuals. While all commenters raised issues about specific aspects of the rule, several commenters indicated that they generally supported it. Some commenters had major concerns about the rule and suggested modifications that would have significantly changed the nature of the rule as it was proposed. EPA reviewed and considered all comments received on the proposed rule and prepared detailed responses to the comments. Copies of all comments received along with EPA's ''Summary of Public Comments and EPA's Response'' are available in the public docket for this rulemaking. A discussion of the final rule, including a summary of significant comments and EPA's responses follows.

A. Coverage of Microorganisms under TSCA

EPA continues to believe that the TSCA section 3(2) definition of ''chemical substance'' gives EPA authority to review microorganisms under TSCA. EPA is retaining its interpretation of ''new'' microorganisms as stated in the 1986 statement policy and the proposed rule. Under that interpretation, microorganisms resulting from deliberate combinations of genetic material from organisms classified in different genera constitute ''new'' microorganisms subject to section 5 reporting requirements. EPA terms such microorganisms intergeneric. For the purposes of this rule, EPA will treat mobile genetic elements, those elements of genetic material that have the ability to move genetic material within and between organisms, as follows: The term ''intergeneric microorganism'' includes a microorganism which contains a mobile genetic element which was originally isolated from a microorganism in a genus different from the recipient microorganism. Excluded from the definition of ''intergeneric microorganism'' are microorganisms which contain introduced genetic material consisting solely of well-characterized, non-coding regulatory regions from organisms in another genus. These terms are defined at § 725.3.

1. *Intergeneric scope*. EPA has decided to define ''new microorganisms'' as those microorganisms resulting from the deliberate combination of genetic material originally isolated from organisms classified in different genera because of the degree of human intervention involved, the significant likelihood of creating new combinations of traits, and the greater uncertainty regarding the effects of such microorganisms on human health and the environment. This approach, based on a taxonomic standard, both identifies a group of microorganisms whose behavior in the environment poses significant uncertainty, which therefore warrant regulatory review under TSCA section 5, and provides a way of defining ''new'' microorganisms under TSCA section 5.

TSCA section 5 requires all manufacturers of new chemical substances to submit information to EPA 90 days before commencing commercial manufacture, to permit EPA to examine whether they may present an unreasonable risk of injury to health and the environment. As discussed at greater length in Unit II. of the Response to Comments Document, the rationale for the requirement was to have EPA attempt to resolve the uncertainties surrounding the class of new chemical substances--specifically, whether they were likely to cause unreasonable risks before they were introduced into the environment.

When considering the various approaches that could be used to define a ''new'' microorganism for TSCA purposes, one important factor EPA took into account was the regulatory precedents established in compiling the inventory of existing chemical substances under section 8(b) of TSCA. Any chemical substance not on the Inventory is ''new'' under section 5(a) of TSCA and is therefore subject to premanufacture reporting. Naturally occurring substances and substances derived from nature with limited human intervention are considered to be automatically included on the Inventory, and thus are not ''new.'' EPA concluded that microorganisms found in nature could also be considered not new because they occur naturally, without human intervention, and therefore, ''naturally occurring microorganisms'' are automatically listed on the TSCA Inventory, and are not subject to this rule.

Second, EPA considered that modern biotechnology techniques permit genetic

material to be intentionally moved between and combined in disparate organisms. On occasion the genetic material combined would not be genetic material expressing traits possessed by both the donors of the genetic material and the recipients. In other words, the genetic material encoding these traits would not be commonly shared between the donor and recipient organisms. Microorganisms formed from genetic material not commonly shared by donors and recipients would have a significantly higher probability of exhibiting new traits or new combinations of traits compared to naturally occurring microorganisms. Some of the microorganisms developed through modern biotechnology may exhibit new or altered traits affecting, for example, their survivability, host range, substrate utilization, competitiveness with other organisms, or protein or polysaccharide production. The behavior of organisms expressing a new trait or new combinations of traits is thus less predictable and their probable behavior less certain. EPA chose to focus particular regulatory attention on microorganisms that have a higher potential for exhibiting a new trait or combinations of traits.

EPA decided that a standard based on the taxonomic taxon of genus defined a class of sufficiently high probability of exhibiting a new trait or new combinations of traits to warrant review. Taxonomy is a system of orderly classification of organisms according to their presumed natural relationships. Since the organisms contributing genetic material to intergeneric microorganisms are, in general, more distantly related than the microorganisms contributing genetic material to intrageneric microorganisms (and thus less likely to have traits in common), intergeneric microorganisms have a higher probability of exhibiting a new trait or new combinations of traits and their behavior is therefore significantly less predictable than intrageneric microorganisms.

A scope based on a taxonomic standard such as intergeneric has certain advantages. A taxonomy based scope relates directly to the potential of the resulting new microorganism to display a new trait or new combinations of traits, since organisms that share a close evolutionary ancestry are more likely to have traits in common than those that are more distantly related. In addition, the taxonomy standard is independent of the technology used to create the microorganism. A number of techniques may be used to produce intergeneric microorganisms. Any intergeneric microorganisms created by techniques developed in the future would also be subject to this final rule.

Taxonomy reflects current scientific observations about phenotypic, and to a certain extent, genotypic, differences between organisms. Although subject to periodic revision within the scientific community, taxonomy is a common language used by scientists. Basing the standard for interpreting ''new'' for microorganisms on an existing system for categorizing organisms obviates the need to create another system for determining if a microorganism is subject to reporting under TSCA section 5. Taxonomy is understood by the regulated community and its use imposes little, if any, additional burden to determine whether a microorganism is new.

For circumscribing what is new for TSCA section 5, microbial taxonomy is a relatively clear and objective criterion for scope of oversight and thus provides clarity for both the regulated community and the Agency for enforcement purposes. Taxonomic designations provide a widely available standard and point of reference. It is reasonable to expect a manufacturer to use the taxonomic literature and/or taxonomists to determine currently accepted names of organisms they wish to utilize. Once a manufacturer knows the genus of a microorganism, he or she can readily determine whether a microorganism is intergeneric and thus whether it is ''new'' within the section 5 context.

EPA recognizes that taxonomy, particularly microbial taxonomy, is subject to change and that new information concerning organisms' properties and relationships could alter taxonomic designations. In recent years, new tools have become available to microbial taxonomists which have allowed them to clarify phylogenic relationships among microorganisms. Some microbial genera are highly defined and consist of closely related members which are likely to share common information in their genetic material. However, other microbial genera may consist of members more closely related to microorganisms classified in other genera than to each other. While reorganizations could result in changes in taxonomic designations for some microorganisms in the short term, it should result in greater stability in the various taxa in the long term. EPA anticipates that as reclassifications occur in the scientific community, the intergeneric standard will become a better reflection of the probability of new traits or new combination of traits resulting from the deliberate combining of genetic material. However, even under current taxonomic designations, gene exchange is generally less likely to occur naturally among members of different microbial genera than among members of the same genus, and this suggests a new trait or new combinations of traits are more likely to occur when genetic material from microorganisms in different taxonomic genera are combined. Moreover, the probability of a new trait or new combination of traits occurring increases when the organisms combining genetic material are more distantly related; e.g., even among the microorganisms, bacteria classified in different genera are more likely to share common traits than bacteria and fungi, and bacteria classified in different genera are more likely to share traits than bacteria with plants and animals. While taxonomic reorganizations could affect the status, for TSCA purposes, of some microorganisms formed by combining genetic material from some relatively closely related microorganisms, the TSCA section 5 status of microorganisms formed by combining genetic material of more distantly related organisms is unlikely to be affected. These considerations suggest that while taxonomy may not be a perfect standard, its use is likely to capture for review those microorganisms with a higher probability of displaying new traits or new combinations of traits. EPA discusses in other parts of this preamble and in the Response to Comments document how it will accommodate within its regulatory structure reclassifications of microorganisms into new or different taxa.

EPA believes that on whole, the intergeneric definition generally captures for review microorganisms with a higher potential for displaying a new trait or new combination of traits. While this approach does have some drawbacks, EPA believes that its procedures are sufficiently flexible to accommodate these drawbacks, and that the advantages to using the intergeneric definition outweigh the disadvantages.

EPA includes the phrase ''originally isolated'' in the definition of intergeneric to clarify that genetic material belongs to the genus from which it was originally isolated or originally observed. For example, if a sequence of genetic material was originally introduced from microorganism A into microorganism B, subsequently reisolated from microorganism B to be combined in microorganism C, the manufacturer or developer must consider the genera of microorganisms A and C in determining the status of the microorganism

resulting from the second combining event described above.

2. *Mobile genetic elements*. In the proposal (59 FR 45528), EPA also discussed mobile genetic elements (MGEs) and how it would apply its MGE policy to the interpretation of ''new'' microorganisms for the purposes of TSCA section 5. EPA has retained the policy and incorporated it in its definition of intergeneric microorganism. MGEs, which are elements of genetic material such as plasmids and transposons, may in nature move within or among organisms and may carry with them and transfer genetic material in addition to their own. MGEs, which are used as vectors for moving genetic material among organisms, may move across taxonomic boundaries and therefore are not a constant part of the genome of one particular taxonomic group or another.

After publication of the 1986 policy statement describing EPA's intergeneric interpretation, several producers of microorganisms inquired about the status under TSCA of microorganisms containing MGE material. Therefore, it was necessary for EPA to develop an approach for addressing MGEs under the intergeneric interpretation. In keeping with its intergeneric definition which focused on the origin of the introduced genetic material, EPA decided that microorganisms would be considered intergeneric if they contained an MGE first identified in a microorganism in a genus different from the recipient microorganism genus. Microorganisms would be considered intrageneric, and not new, if the literature indicates the MGE was first identified in a microorganism in the same genus as the recipient. EPA has continued to use this policy regarding MGEs to assist in determining whether a microorganism is intergeneric.

The issue of whether the MGE may be indigenous to the recipient genus is not considered in EPA's approach to determining whether the final microorganism is inter- or intrageneric. The major consideration is the source of the organism in which the MGE was first identified. The source of the organism in which the MGE was first identified may be determined by a search of relevant published scientific literature or by reviewing available data bases such as GENBANK. Such a literature or data base reference is often the first to name, and possibly describe, the MGE. Subsequent references postdating this first reference are frequently not relevant for determining the intergeneric status of the MGE, since after isolation an MGE is often transferred to a different taxon where it can be more easily maintained and studied. Although EPA recognizes that MGEs may occur in more than one genus in nature, EPA believes that for the moment, use of the source of the organism in which the MGE was first identified for classifying MGEs provides the most straightforward regulatory approach under its intergeneric definition. EPA will continue to use this approach until it can reevaluate the status of MGEs within an intergeneric standard in a future rulemaking. EPA has included a statement about MGEs in its definition of intergeneric microorganisms in this final rule.

3. *Well-characterized, non-coding regulatory regions*. In the 1986 policy statement and in the proposed rule, EPA excluded from the definition of intergeneric microorganisms, those microorganisms that resulted from the addition of intergeneric material that is well-characterized and contains only non-coding regulatory regions such as operators, promoters, origins of replication, terminators, and ribosome-binding regions. Where only regulatory material is transferred, no distinctly new combinations of traits are introduced. Instead, quantitative changes in existing traits in the recipient microorganisms may occur. EPA recognizes that insertion of well-characterized, noncoding regulatory regions may result in expression of previously cryptic regions. However, the genetic material in cryptic regions is present in the population and could be expressed in some members of the microbial population at any time naturally. A microorganism expressing such material as a consequence of insertion of non-coding regulatory regions would thus not be new under TSCA. Therefore, EPA believes that microorganisms formed through intergeneric transfer of well-characterized, non-coding regulatory regions should not be considered ''new'' microorganisms under TSCA section 5. EPA emphasizes that this exclusion applies only to intergeneric microorganisms that have resulted solely from the addition of well-characterized, non-coding, regulatory regions. If the final microorganism contains any regions from organisms of other genera that do not meet this restriction, such as coding regulatory regions or any poorly characterized regions, the microorganism is considered new and is not eligible for the exclusion.

In response to comments, EPA has revised some of its definitions at § 725.3 relating to the intergeneric scope to provide greater clarity for the regulated community. The word ''introduced'' has been added to the second sentence in the definition of ''intergeneric microorganism'' to clarify that microorganisms which contain introduced genetic material consisting only of well-characterized, non-coding regulatory regions from another genus are not considered intergeneric for the purposes of TSCA section 5. EPA agrees with a commenter who suggested that the regulations should have a single definition of well-characterized and that the definitions of ''well-characterized'' at §§ 725.3 and 725.421(b) should be identical. To achieve this end, the phrase ''well-characterized, non-coding regulatory region'' would be deleted from §§ 725.3 and ''well-characterized'' and ''non-coding regulatory region'' would be separately defined. Therefore, the definition of ''well-characterized, non-coding regulatory region'' is being deleted and definitions of ''non-coding regulatory region'' and ''well-characterized'' are being added to § 725.3. EPA agreed with the commenter's suggestion to use the language in § 725.421(b) to define ''well-characterized.'' EPA developed the definition of ''non-coding regulatory region'' based on language pertinent to the non-coding aspect of the definition of ''well-characterized, non-coding regulatory region.'' EPA believes that it is necessary to specifically require that the regulatory regions be non-coding. As stated in the 1986 policy statement and in the proposed rule, EPA excluded from the definition of intergeneric microorganisms, those microorganisms that solely contained intergeneric regulatory regions that are well-characterized and non-coding. Such intergeneric material would not introduce distinctly new combinations of traits. Instead, only the level of expression of existing traits in the recipient microorganisms may be altered. By also including a restriction that the flanking sequences be non-coding, EPA is ensuring that persons will consider the nature of the flanking sequences associated with regulatory regions when determining their eligibility for the well-characterized, non-coding regulatory region exclusion.

In the proposed rule, EPA indicated that it may choose to reconsider its interpretation of ''new'' microorganism at a later time and in a separate rulemaking. Of the 17 comments received on scope of oversight, only 4 commenters strongly opposed the intergeneric scope and supported another approach, while 13 commenters expressed some level of support for intergeneric, albeit with some modifications. EPA believes that while

the intergeneric scope is not perfect, as one commenter noted, ''no one has proposed a clearly superior scope, despite years of discussion and debate.'' Therefore, EPA is retaining the intergeneric interpretation for the final rule. However, EPA appreciates the many useful suggestions made by commenters for refinement of the intergeneric interpretation and plans to consider at a later time modifications to the intergeneric interpretation, including issues related to the exclusion of well-characterized, non-coding regulatory regions and to the MGE policy. TSCA applicability and scope of oversight are discussed in detail in the proposed rule and in the Response to Comments document in Unit II.

B. Reporting General Commercial Use of Microorganisms

1. *MCAN and SNUR*. The final rule incorporates many procedures that were originally developed for the TSCA section 5 program for traditional chemicals. Procedures from parts 720 (premanufacture notification (PMN)) and 721 (significant new use notification SNUN)) are being placed in the new part 725 with the minor modifications necessary to accommodate the specific characteristics of microorganisms. In lieu of the PMN or SNUN described in parts 720 and 721, respectively, EPA is including in part 725 a requirement for submission of a MCAN by persons who intend to manufacture or import new living microorganisms, and by persons who intend to manufacture, import, or process microorganisms for a significant new use. Subpart D of part 725, which contains the MCAN requirements, is being promulgated without substantive revision. The MCAN process is discussed in the proposed rule and in the Response to Comments document in Unit III.A.

EPA received general comments about the process, as well as specific comments about contract manufacturing, certain information requirements for the MCAN process, and the inclusion of requirements for byproducts. EPA is providing additional explanations and clarifications to address these concerns. Both the comments and EPA's responses are discussed in detail in the Response to Comments document in Unit III.A.

In response to the commenters who stated that the information required to be submitted in the MCAN was confusing, burdensome, and open-ended, EPA notes that both the proposed and final rule require submission only of the information that is explicitly required to be submitted by TSCA section 5(b) and 5(d)(1). The purpose of the MCAN is to supply EPA with information necessary to identify and list the new microorganism on the TSCA Inventory and to determine whether the microorganism and the associated activities would pose an unreasonable risk of injury to human health or the environment. The MCAN information requirements closely parallel those for PMNs and differ only to the extent necessary to accommodate the specific characteristics of living microorganisms. Therefore, the introductory paragraphs in § 725.155 have been revised to more closely parallel the introductory language in § 720.45, which contains the information requirements for the PMN. EPA has also revised § 725.155(b) to explicitly include the statement that the submitter should include all reasonably ascertainable information that will permit EPA to make a reasoned evaluation of the health and environmental effects of the microorganism. EPA believes that the addition of the statement in § 725.155(b) also addresses the commenter who requested that EPA relate the information requested to the data necessary to assess potential risk to human health and the environment.

The proposed subpart L of part 725 incorporated the Significant New Use Rule (SNUR) provisions from part 721 with minor modifications to accommodate the specific characteristics of living microorganisms. EPA is promulgating subpart L in the final rule with minor revisions, primarily to clarify the relationship of subpart L to the other subparts in part 725. EPA has not yet proposed a SNUR for a specific microorganism. EPA has clarified its approach to microorganism SNURs in response to commenters. The SNUR for microorganisms is discussed in the proposed rule (59 FR 45552-53) and in the Response to Comments document in Unit III.B.

2. *Tiered exemption*. EPA is establishing under TSCA section 5(h)(4), the Tier I and Tier II exemptions for certain microorganisms meeting certain criteria. The criteria defining eligibility for the Tier I exemption address: (1) The recipient microorganism; (2) the introduced genetic material; and (3) physical containment conditions to minimize the numbers of microorganisms emitted from the manufacturing facility. For the Tier II exemption, only the first two of the Tier I criteria must be met. Manufacturers would select containment appropriate to minimize release of the microorganisms. EPA would review the appropriateness of the containment for the microorganisms in an expedited 45–day review. The requirements for the tiered exemptions are found in subpart G of part 725. In response to comments, EPA has made certain revisions to requirements for the introduced genetic material at § 725.421 and for physical containment at § 725.422. These are discussed below. The tiered exemption is discussed in detail in the proposed rule (59 FR 45545-50) and in the Response to Comments document in Unit III.C.

a. *General comments*. EPA received comments on issues related to the overall approach to the tiered exemption. While EPA did not make substantive changes to the process for the Tier I and Tier II exemptions, EPA did make minor changes in §§ 725.424 through 725.470 to further clarify exemption requirements. In Unit III.C. of the Response to Comments document, EPA provided additional explanation of its rationale for development of the tiered approach.

Some commenters indicated that it is ''excessive and unwarranted'' to require the submitter for a tiered exemption to certify that test data are being submitted as stated in § 725.25(b). Another commenter stated that a 30–day review was not necessary and that companies working with organisms eligible for the Tier I exemption should simply document their eligibility in their records.

EPA wishes to clarify how the certification statement at § 725.25(b) applies to the tiered exemption. The first two sentences, where the company indicates that it intends to manufacture the microorganism identified in the submission and that all information is complete and truthful, are applicable to all submitters. However, the last sentence is only relevant to persons preparing either the MCAN which includes information requirements at § 725.160 or the TERA which includes information requirements at § 725.260. To reduce confusion, EPA has added a clarification to § 725.424(b)(5). EPA inadvertently neglected in the proposed regulatory text, although the proposed preamble clearly describes procedures, to include the requirements at § 725.424(b)(4) and (5) as requirements for the Tier II exemption at § 725.455. Therefore, EPA has added those requirements as § 725.455(e) and (f) in the final rule. Although § 725.25(b) states that persons submitting exemption requests must submit the certification statement, EPA has repeated the requirement at §§ 725.424(b)(5) and 725.455(f) for the convenience of submitters. The requirement at § 725.455(e) was

inadvertently left out of the proposed rule; however, EPA does not believe that this requirement adds an additional burden, because submitters should already have information about waste disposal of the microorganisms.

EPA agrees that EPA review is not required for the Tier I exemption, as EPA has already made the no unreasonable risk finding for microorganisms meeting the conditions of the exemption. EPA has structured the Tier I exemption such that EPA receives a one-time certification alerting EPA to the application of the exemption and to demonstrate that the submitter is complying with the criteria set out for the exemption. The certification contains no data for EPA to review. Once a person has sent in the certification required by § 725.424, subsequent uses of the same recipient do not require additional certification under § 725.424, as long as the manufacturer is continuing to comply with the introduced genetic material requirements of § 725.421 and the containment requirements of § 725.422. While EPA does not believe that an EPA review is necessary, EPA does believe that it is appropriate for EPA to be notified of which manufacturers are eligible for and utilizing the exemption. However, EPA also has decided that since the purpose of the certification is solely to inform EPA that persons are using the Tier I exemption, such notification is not needed 30 days in advance, and 10 days in advance of manufacture or import is sufficient. Therefore, EPA has revised the requirement at § 725.424(a)(4) to require submission of the certification to EPA at least 10 days before commencing initial manufacture or import of a new microorganism.

b. *Recipient microorganism*. EPA received no substantive comments challenging EPA's approach to selecting recipient microorganisms for listing or questioning the eligibility of the 10 candidates proposed for listing. Therefore, EPA has not made substantive changes to its approach to selecting recipient microorganisms. Section 725.420 continues to list the 10 microorganisms as eligible for use in the tiered exemption. Although EPA explained in detail in the proposal (59 FR 45545-47) the considerations it evaluated in selecting candidate microorganisms for listing at § 725.420, EPA provided commenters with additional explanation as to how six criteria are used together to determine a microorganism's eligibility for listing at § 725.420. The recipient microorganism criteria are discussed in detail in the proposed rule (59 FR 45545-47) and in the Response to Comments document in Unit III.C.2.

Some commenters were concerned about the effect of potential changes in microbial taxonomy on the microorganisms listed at § 725.420. The risk assessments that EPA prepared for the 10 microorganisms listed at § 725.420 evaluated the hazards of the microorganisms as they were appropriately designated taxonomically in 1994. Therefore, EPA believes that if in the future the name is changed for any of the 10 microorganisms currently listed in § 725.420, persons would need to document that their microorganisms would have been classified in 1994 under the name listed in § 725.420.

EPA proposed the petition process at § 725.67 to provide a mechanism for the public to propose additional candidates and provide the appropriate supporting information. As a general matter, EPA expects that petitions to add specific recipient microorganisms to the list at § 725.420 will ideally be preceded by several MCANs before the necessary experience with and information on the microorganism have been accumulated to provide EPA with a starting point for determining whether the recipient should be listed as a candidate for the tiered exemption. EPA has revised the regulatory text for the petition process at § 725.67 generally to clarify that the information required to be submitted in a petition will mirror the information requirements for the provision for which the exemption is being sought. With regard to the tiered exemption, EPA has indicated at § 725.67(a)(3)(iii) that when applying to list a recipient microorganism for the tiered exemption under § 725.420, persons should include information addressing the six criteria, which EPA will use to evaluate the microorganism for listing. EPA made the generic revision, because the petition process was designed to be used by anyone seeking to apply for a section 5(h)(4) exemption from full MCAN reporting under TSCA section 5.

One commenter asked EPA to clarify whether the microorganism *Bacillus amyloliquefaciens* would be considered a variant of the listed candidate *Bacillus subtilis* and thus eligible for the tiered exemption. EPA does not believe that *Bacillus amyloliquefaciens* can be subsumed under the exemption for *Bacillus subtilis*. *B. amyloliquefaciens* may have been considered a variant of *B. subtilis* in the past; however, by the time the risk assessment for *B. subtilis* was developed in 1994, *B. amyloliquefaciens* had been given separate species status (Ref. 1). Therefore, *B. amyloliquefaciens* is not synonymous with *B. subtilis*, and EPA is not including the former under the exemption for the latter.

Another commenter asked that EPA add *Pseudomonas fluorescens* to the list at § 725.420. After review of the information supplied by the commenter, and other information referenced in the Response to Comments Document in Unit III.C.2.b., EPA has concluded that the species *P. fluorescens* is not eligible for listing as a recipient microorganism under § 725.420 at this time for the following reasons: its confusing taxonomic status; its lack of history of safe commercial use; and the potential of some strains currently classified as *P. fluorescens* to cause adverse effects on human health and the environment, particularly in relation to plant pathogenicity. EPA's review does not represent a full consideration of the species *P. fluorescens*, because sufficient information was not submitted. Thus EPA responds to the commenter's request as a rule comment and not a formal petition.

c. *Introduced genetic material*. For the introduced genetic material, EPA identified four requirements in § 725.421 which must be met to qualify for the Tier I or Tier II exemptions: the genetic material must be (a) limited in size, (b) well-characterized, (c) poorly mobilizable, and (d) free of certain sequences. EPA responds to comments on the criteria for the introduced genetic material within the context of the intergeneric scope. The terms in the final regulatory text for the tiered exemption refer to ''introduced genetic material'' and only the intergeneric portions of the introduced genetic material must meet the requirements at § 725.421. Therefore, the requirements in § 725.421 refer solely to the introduced genetic material which is derived from an organism classified in a different genus from the recipient microorganism. The introduced genetic material criteria are discussed in detail in the proposed rule (59 FR 45547-48) and in the Response to Comments document in Unit III.C.3.

(i) *Limited in size*. The requirements for the ''limited in size'' criterion are set forth at § 725.421(a), which states that the introduced genetic material must consist only of the following: (1) The structural gene(s) of interest; (2) the regulatory sequences permitting the expression of solely the gene(s) of interest; (3) associated nucleotide sequences needed to move genetic material, including linkers, homopolymers, adaptors, transposons, insertion sequences, and restriction enzyme sites; (4) nucleotide sequences needed for vector transfer; and (5) nucleotide sequences needed for vector

maintenance. EPA discussed its rationale supporting the limited in size criterion in the preamble to the proposed rule (59 FR 45547).

EPA is providing additional guidance for interpreting the ''limited in size'' requirements in this preamble and in the Response to Comments document in Unit III.C.3.a., but is not making changes to the regulatory text at § 725.421(a). Commenters generally requested that EPA clarify which vector sequences would meet the criterion, including the status of certain sequences found in well-known, frequently used plasmids. In response, EPA is clarifying that it interprets requirement (3) above to allow the introduced DNA to contain vector material necessary for maintenance in and/or transfer to intermediate hosts, provided this vector material is not expressed in the intergeneric microorganism that will be manufactured under the tiered exemption. Such nonexpressed vector material should not change the behavior of the intergeneric microorganism. EPA also indicates that certain plasmid and phage vectors listed in Appendices E and I of the National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines (59 FR 34496, July 5, 1994) (FR Doc. 94–16200)) (Ref. 2) would meet the introduced genetic material criteria including the limited in size criterion.

(ii) *Well-characterized*. The requirements for the ''well-characterized'' criterion are set forth at § 725.421(b) which states that well characterized means that the following have been determined for the introduced genetic material: (1) The function of all of the products expressed from the structural gene(s); (2) the function of sequences that participate in the regulation of expression of the structural gene(s); and (3) the presence or absence of associated nucleotide sequences where associated nucleotide sequences are defined as those ''needed to move genetic material, including linkers, homopolymers, adaptors, transposons, insertion sequences, and restriction enzyme sites.'' EPA discussed its rationale supporting the well-characterized criterion in the preamble to the proposed rule (59 FR 45547).

EPA is providing additional guidance for interpreting the ''well characterized'' requirements in this preamble and in the Response to Comments document in Unit III.C.3.b., but is not making changes to the regulatory text at § 725.421(b). Commenters expressed concerns about what it means to know the functions of all products expressed by the structural genes, how to address open reading frames (ORFs) present in the introduced genetic material, what information is needed to determine whether upstream activator sequences meet the ''well-characterized'' criterion, and whether complete genomic sequencing of the final construct is necessary to meet the well-characterized definition.

EPA's intent in developing the ''well-characterized'' criterion was to ensure that the functions introduced with the genetic material were sufficiently understood to predict the likely behavior of the resulting microorganism. Because EPA defined a ''new'' microorganism as an intergeneric microorganism, it is the predicted effect of the intergeneric sequences on the phenotype of the recipient microorganism that must be evaluated. With regard to the functions of products expressed by introduced structural genes, manufacturers could rely, for example, on peer-reviewed literature on products of structural genes and/or the results of protein expression assays to characterize the function(s) of a gene product.

Manufacturers must ensure, by evaluating ORFs and multiple reading frames, that unanticipated novel traits are not expressed by the intergeneric microorganism. ORFs must be assessed to determine whether a product other than the anticipated, desired product is likely to be expressed and to predict whether such a product(s), if expressed, would have an effect on the phenotype of the intergeneric microorganism.

In determining the status of upstream activator sequences (UASs) with regard to the exemption at § 725.421, manufacturers must first consider whether introduction of the UAS would create an intergeneric microorganism. For a UAS isolated from an organism in a different genus from the recipient microorganism, manufacturers should determine whether their UAS meets the requirements in the definitions at § 725.3 for ''non-coding regulatory region'' and for ''well-characterized.'' Microorganisms developed through the introduction of only UAS genetic material that is isolated from an organism in a different genus and that meets the above-noted definitions at § 725.3, are excluded from the definition of ''intergeneric microorganism'' and therefore are not subject to the requirements of TSCA section 5.

Manufacturers who wish to utilize the tiered exemption for microorganisms that contain both a UAS(s) and other genetic material isolated from an organism(s) in a different genus than the recipient, must, to meet the exemption requirements: (1) Ensure that the UAS meets the definitions of ''non-coding regulatory region'' and ''well-characterized'' at § 725.3; (2) ensure that the other introduced genetic material meets the requirements at § 725.421(b); and (3) ensure that the other requirements of the Tier I or Tier II exemption are met.

(iii) *Poorly mobilizable*. The requirements for the ''poorly mobilizable'' criterion are set forth at § 725.421(c) which states that the probability that the introduced genetic material would be transferred to other microorganisms must be low, with a frequency of transfer of less than 10^{-8} transfer events per recipient. EPA discussed its rationale supporting the poorly mobilizable criterion in the preamble to the proposed rule (59 FR 45547-48).

EPA is providing additional guidance for interpreting the ''poorly mobilizable'' requirements in this preamble and in the Response to Comments document in Unit III.C.3.c., but is not making changes to the regulatory text at § 725.421(c). Some commenters requested clarification on the conditions under which the 10^{-8} criterion should be measured. They also requested that EPA clarify the status with regard to the ''poorly mobilizable'' criterion of introduced genetic material located on the chromosome.

EPA believes the 10^{-8} criterion, which is a standard established by NIH in its Guidelines (Ref. 2) and an important feature of the Good Industrial Large-Scale Practices (GILSP) criteria developed by the Organization of Economic Cooperation and Development (OECD) (Ref. 3), should be applied to the introduced genetic material under § 725.421, because EPA is not restricting (aside from that under § 725.421(d)) the source and function of the introduced genetic material. Therefore, EPA in order to make the finding that organisms meeting the other criteria at § 725.400 present low risk, the ''poorly mobilizable'' standard must be included in the criteria at § 725.421. EPA believes that manufacturers can readily determine whether the introduced genetic material will meet the 10^{-8} criterion. For many bacteria, most sequences introduced by transduction and transformation will *a priori* meet the 10^{-8} criterion. Therefore, a single mechanism of gene exchange, conjugation, will need to be considered and the introduced genetic material constructed to meet the 10^{-8} standard for that mechanism. EPA also clarifies that genetic material stably integrated into the chromosome with no functional transposons is likely to meet the 10^{-8} criterion.

(iv) *Free of certain sequences.* The requirements for the ''free of certain sequences'' criterion were set forth at proposed § 725.421(d) which indicated that the introduced genetic material must not contain any part of the nucleotide sequences that encode certain listed toxins, which are polypeptides of relatively high potency. EPA discussed its rationale supporting the ''free of certain sequences'' criterion in the preamble to the proposed rule (59 FR 45547).

A commenter noted that the language in proposed § 725.421(d), if taken literally, would ''preclude the use of DNA that codes for a pair of amino acids (or even a single one) if that sequence also occurs in any of these toxins.'' In order to clarify this point, the commenter suggested that the language be altered to state that the introduced genetic material must not contain a sequence ''encoding any active moiety of a toxin'' listed in § 725.421(d).

EPA is providing additional guidance for interpreting the ''free of certain sequences'' requirements in its Response to Comments document in Unit III.C.3.d., and is modifying the regulatory text at § 725.421(d) to clarify its intentions. The introductory text of § 725.421(d) has been modified to include the term ''functional portion of a toxin-encoding sequence.'' To assist submitters in interpreting the term ''functional portion'' of a toxin-encoding sequence described at § 725.421(d), EPA provides a discussion of sequences that directly or indirectly contribute to toxic effects in human cells. For toxins that affect a cell's cytoplasmic functions, nucleic acid sequences that encode the ''functional portion'' of a toxin are those which encode either functional receptor binding or toxic domains of the toxin. For toxins that affect a cell's membrane, nucleic acid sequences that shall not be included in the introduced genetic material are those which encode the functional portion that allows target cell membrane disruption.

EPA did not intend for the restriction on toxin-encoding sequences to be interpreted to mean that the presence of a nucleotide found in a toxin gene sequence on the list at § 725.421(d) would preclude introduced genetic material containing that nucleotide from qualifying for the tiered exemption. EPA believes the likelihood of any significant risk resulting from incorporation of nonfunctional portions of a toxin gene into a recipient listed at § 725.420 is low. EPA is also modifying the definition to emphasize that EPA is excluding specific toxin sequences and not source organisms, which are listed at § 725.421(d) to identify the toxins.

d. *Physical containment.* The proposal included the following containment requirements at § 725.422 for the Tier I exemption: (1) The structure is designed and operated to contain the microorganism, (2) limit entry only to those persons whose presence is critical to the reliability or safety of the activity, (3) provide written, published, and implemented procedures for the safety of personnel and control of hygiene, (4) provide and document effectiveness of inactivation procedures to reduce microbial concentrations by at least 6 logs in liquid and solid wastes, (5) provide and document effectiveness of features to reduce microbial concentration by at least 2 logs in aerosols and exhaust gases released from the structure, (6) include and document systems for controlling dissemination of the microorganisms through other routes, (7) have in place emergency clean-up procedures. Most of the comments focussed either on (2), the limited entry requirement, or (4) and (5), the inactivation requirements. The physical containment criteria are discussed in detail in the proposed rule (59 FR 45548-49) and in the Response to Comments document in Unit III.C.4.

(i) *Limited entry requirement.* Some commenters indicated that the limited entry requirement was too restrictive, given the low potential hazards posed by microorganisms used under the Tier I exemption criteria. Specifically, they stated that under that requirement, managers may be precluded from allowing administrative personnel, customers, school and other educational tours into the facility. It was not EPA's intention to constrain facility managers to this extent. Consequently, EPA recognizes that language at proposed § 725.422(b) may have been stricter than was necessary. Neither the NIH Guidelines (Ref. 2) nor the OECD GILSP criteria (Ref. 3) have specific limited entry requirements for large scale uses of comparable microorganisms. Additionally, EPA's review of PMNs received for intergeneric microorganisms indicated that restricted entry was not common industry practice (Ref. 4). EPA agrees with the commenters who stated that given the low risk posed by the microorganisms eligible for the exemption, managers should have the discretion to allow administrative personnel, customers, and school and other educational tours into the facility. However, EPA also expects that managers will maintain appropriate containment, thereby controlling access and avoiding inadvertent exposure. Modification of the language of this requirement does not alter EPA's original determination that microorganisms that are eligible for and used under the conditions of the Tier I exemption will not present an unreasonable risk of injury to human health and the environment. Therefore, EPA has revised § 725.422(b) to read ''Control access to the structure.''

(ii) *Inactivation requirements.* Some commenters indicated that with the limitations placed on the recipient microorganism and the introduced genetic material, quantitation of inactivation procedures was not necessary. The commenters stated that it would be necessary to modify existing equipment to sample off-gas as required and that an additional sample port would increase the potential for contamination and worker exposure. The commenters suggested that instead of numerical requirements, language be substituted that more generally required reduction of microorganisms in liquid and solid wastes and aerosols and exhaust gases. Other commenters stated that the numerical requirements for the inactivation procedures are too lenient. These commenters suggested that gases be vented through a HEPA filter or incinerated. They also recommended that the containment criteria be coordinated with the containment levels set out in the NIH Guidelines (Ref. 2).

After considering comments regarding its inactivation requirements at proposed § 725.422(d) and (e), EPA reviewed information submitted on physical containment and control technologies in PMNs it has received for intergeneric microorganisms between 1986 and 1995 (Ref. 4). On the basis of that review, EPA has made the following determinations. EPA has decided to retain § 725.422(d) which requires the use of inactivation procedures that reduce microbial concentrations by at least 6 logs in liquid and solid wastes. However, EPA has determined that it is appropriate to revise § 725.422(e) to read ''Provide and document effectiveness of features to minimize viable microbial populations in aerosols and exhaust gases released from the structure.'' The physical containment criteria are discussed in detail in the Response to Comments document in Unit III.C.4.

As indicated in the preamble to the proposed rule (59 FR 45548-49), EPA believed that it was appropriate to prescribe standards for minimizing the number of microorganisms emitted through the disposal of wastes, because a wide range of behaviors could be displayed by microorganisms eligible for the exemption and because EPA would not be reviewing MCANs on

microorganisms eligible for the Tier I exemption. EPA believes that the requirement for a 6-log reduction in the number of microorganisms is reasonable for inactivation of liquid and solid wastes and well within current industry practices. The 6-log reduction criterion represents a level of inactivation which can be validated. This standard gives a decrease in viable microbial populations so that at least 99.9999 percent of the organisms resulting from the fermentation will be killed. EPA discusses the application of this standard under normal industry practices in the proposed rule (59 FR 45548-49) and in the Response to Comments document in unit III.C.4.b. An examination of PMNs for intergeneric microorganisms (Ref. 4) revealed that this criterion is readily achievable by manufacturers. The review of these PMNs also indicated that in the several cases where monitoring was conducted there were no detectable viable microorganisms in liquid and solid wastes after inactivation (Ref. 4). EPA believes that the 6-log reduction in viable microbial numbers in the liquid and solid wastes is a reasonable and demonstrable performance criterion ensuring an appropriate level of containment for the low risk microorganisms which would be eligible for the tiered exemption.

As indicated in the preamble to the proposed rule (59 FR 45548-49), EPA believed that it was appropriate to require manufacturers to minimize the number of microorganisms emitted through the venting of gases. A wide range of behaviors could be displayed by microorganisms eligible for the exemption, and EPA would not be reviewing MCANs for microorganisms eligible for the Tier I exemption. In the proposal EPA indicated that a 2-log reduction in viable microorganisms per cubic foot of air between the headspace and the actual vent port was the appropriate standard. EPA chose this number based on an estimate of the numbers of microorganisms likely to be in the exhaust from an uncontrolled fermentor and common industry practice. EPA discusses the application of this standard under normal industry practices in the proposed rule (59 FR 45549) and in the Response to Comments document in unit III.C.4.b. Additionally, the 2-log reduction represented a somewhat less restrictive number than the reduction obtained with HEPA filter filtration (the reduction level required for the NIH Guidelines BL1-LS level (NIH, Appendix K, 1995) (Ref. 2).

However, EPA received several comments pointing out the technical problems associated with the proposed 2-log reduction performance criterion. EPA agrees with the commenters that companies should not have to modify/retrofit their existing equipment nor jeopardize the sterility of their fermentations in order to validate that the number of microorganisms being released in the exhaust has been reduced by at least 2 logs relative to the microbial numbers in the fermentor gases in the headspace. EPA did not intend that retrofitting or any other burdensome engineering modifications would be necessary for those who wished to utilize the Tier I exemption. Rather, EPA had intended to develop requirements for this exemption that would impose performance standards for equipment already commonly used. In light of comments received, EPA has sought to modify its requirement to achieve its goal of having submitters demonstrate that the equipment or features normally employed in fermentation systems are effective in reducing numbers of viable microorganisms being vented in exhaust gases.

As stated in the preamble and noted by commenters, industrial fermentations are not routinely run in an uncontrolled fashion, and thus the number of microorganisms potentially released into the gas phase and unrecovered is controlled. Additionally, an examination of PMNs for intergeneric microorganisms (Ref. 4) showed that all of the fermentations, which were operating under standard industry practices, were utilizing features which minimize the number of microorganisms released in the off-gases.

For fermentations to operate optimally, vapor recovery systems are used to maintain the correct growth conditions for the microorganisms, e.g., correct molality in the fermentation broth must be maintained. Vapor recovery systems, by their nature, help to minimize the number of microorganisms exhausted from the facilities. EPA believes that it should allow some flexibility in the type of features manufacturers employ to minimize microbial releases as aerosols. A variety of fermentor equipment or features are commonly used by the industry such as demisters, wet scrubbers, cyclone separators, coalescing filters, and HEPA filters. These types of equipment reduce the number of microorganisms vented through exhaust gases from the fermentor. Moreover, as stated in the preamble (59 FR 45549), even if microorganisms are exhausted from the fermentor, their survival is likely to be limited due to the stress conditions of aerosolization, including shear forces, desiccation, and UV light exposure.

Given the comments received on the feasibility of this requirement and the variety of methods used by PMN submitters to reduce microbial numbers in aerosols, EPA believes that a specific numerical performance standard is less appropriate for inactivation of aerosols than it is for inactivation of liquid and solid wastes. EPA agrees with commenters who asserted that the majority of microorganisms potentially released from the fermentation facility would be found in the liquid and solid wastes. EPA has prescribed a specific viable microorganism reduction standard for these materials. Therefore, EPA believes that if the new microorganism meets all of the other requirements of the Tier I exemption, it is sufficient to require use of validated methods for minimizing release of microbial concentrations in aerosols and exhaust gases without prescribing a specific numerical reduction in numbers. If manufacturers are conducting their quality assurance/quality control (QA/QC) monitoring to ensure proper performance of their fermentation equipment, EPA believes that the facilities would be meeting the requirement of § 725.422(e). EPA has revised § 725.422(e) to read: ''Provide and document effectiveness of features to minimize viable microbial populations in aerosols and exhaust gases released from the structure.'' Based on the above points and the results of the review of EPA's PMN experience, EPA believes that this requirement will ensure that the number of microorganisms released in fermentor off-gases will be negligible and allow EPA to make the ''no unreasonable risk'' finding of section 5(h)(4).

EPA does not agree with commenters who stated that a 2-log reduction for aerosols is too lenient. As discussed in the proposed rule (59 FR 45549), even if small numbers of microorganisms are released in fermentor exhaust gases, aerosolization is a stressful condition decreasing the survival of most microorganisms. Aerosolized bacterial cells are weakened by shear forces, and are subject to desiccation and exposure to UV light. Therefore, survival of aerosolized microorganisms is expected to be limited. Since organisms which are eligible as recipient microorganisms for the Tier I exemption are low risk, EPA does not believe it is necessary to impose more stringent conditions than a requirement that manufacturers minimize the numbers of microorganisms in fermentor off-gases.

Several commenters suggested that EPA coordinate its containment criteria with those specified in the NIH Guidelines (Ref. 2). EPA considered use of the NIH Guidelines when it was developing the tiered exemption but found such an approach to be problematic. In particular, the NIH Guidelines may change through a process independent of EPA activities such that the Guidelines would no longer provide the appropriate criteria to support a TSCA section 5(h)(4) exemption. EPA has developed an approach at § 725.422 based, in large part, on standards set forth in the NIH Guidelines and the OECD GILSP that allow EPA to make the finding that is required under TSCA section 5(h)(4). However, in considering the specific containment requirements of the current NIH Guidelines (Ref. 2), EPA could not find one level in Appendix K that EPA believed would be appropriate for the Tier I exemption. The NIH Good Large Scale Practice (GLSP) criteria that would be applicable to some, but not all, of the microorganisms listed at § 725.420, do not require minimization of the numbers of microorganisms released in off-gasses. Biosafety Level 1-Large Scale (BL1-LS) criteria require the use of HEPA filters or their equivalent, a 3-log reduction, and therefore are more restrictive than EPA's original 2-log reduction requirement.

In reconsidering its original requirement, EPA believes that the costs of retrofitting existing equipment as well as the increase in potential contamination and worker exposure that would accompany sample collection necessary to validate the 2-log reduction requirement are not justified for the low risk microorganisms eligible for the exemption. EPA has attempted to make its approach compatible with good practice in industry. Most of the requirements of § 725.422 are analogous to NIH Guidelines requirements. In particular, companies who are in full compliance with the NIH BL1-LS requirements would also be in compliance with § 725.422(e), although the use of HEPA filters or their equivalent is a more stringent requirement than § 725.422(e).

C. Reporting R&D Activities of Microorganisms

As discussed earlier in this preamble and in the proposed rule, TSCA section 5 generally requires notification to EPA at least 90 days prior to the manufacture and importation of new chemical substances and 90 days prior to the manufacture, importation, and processing of designated chemical substances for significant new uses. TSCA section 5(i) makes clear that only manufacturing, importing, and processing ''for commercial purposes'' are subject to section 5 notification. TSCA section 5(h)(3) exempts entirely from notification under section 5 the manufacturing, importing, and processing of chemical substances ''only in small quantities (as defined by the Administrator)'' for R&D, subject only to the manufacturer, importer, or processor notifying (as prescribed by EPA) the persons involved in the R&D activity of any risks to health associated with the substance.

As discussed in more detail below, for traditional chemical substances, EPA has defined ''small quantities'' for R&D to be those quantities ''not greater than reasonably necessary'' for the R&D purposes. However, EPA is adopting a different definition of ''small quantities'' for R&D for microorganisms, because living microorganisms may reproduce and increase their own volume or amount. The definition adopted in this final rule limits the section 5(h)(3) exemption from section 5 MCAN requirements to R&D activities that are adequately contained as set forth in § 725.234.

This narrower definition of ''small quantities'' means that R&D activities conducted outside the prescribed containment (including field tests) do not qualify for the section 5(h)(3) exemption and are subject to the MCAN requirement. However, EPA has created, under authority of TSCA section 5(h)(4), other exemptions that will reduce the reporting burden for persons conducting certain R&D activities that do not qualify for the complete exemption in section 5(h)(3). These activities are discussed below.

Researchers, including those in academic institutions, may be subject to TSCA section 5 jurisdiction because, by creating or reproducing microorganisms in their R&D activities, they are ''manufacturing'' or ''processing'' such microorganisms. Since many such R&D activities involving microorganisms will not qualify for the section 5(h)(3) exemption from MCAN reporting, it is important for researchers, including those in academic institutions, to determine whether their activities fit within the definition of ''commercial purposes'' and, thus, are subject to TSCA section 5 and the MCAN requirements at all. Because of the nature of microorganism R&D and the broad definition of ''commercial purposes'' discussed below, it is likely that many researchers, including some in academic institutions, will be subject to TSCA section 5 jurisdiction for the first time and will want to utilize the TERA and other exemption provisions to reduce the reporting burdens involved in their R&D activities.

Each of the exemptions for R&D activities applies to specific types of activities. At the beginning of R&D, while the research is taking place in a laboratory subject to appropriate containment, the R&D activity may be fully exempt under the section 5(h)(3) exemption if the researcher complies with the conditions set out in the rule. Once the researcher decides to conduct research outside the contained setting, such as field tests, the researcher will need to utilize a different exemption, such as the TERA.

1. *TSCA jurisdiction*. EPA did not propose any provisions that would alter the jurisdictional scope of section 5, i.e., whether the use or potential use of a microorganism would be subject to TSCA. However, EPA received comments asking for clarification regarding TSCA section 5 coverage of R&D activities with microorganisms. A commenter requested clarification of EPA's statement that ''EPA would consider that R&D activities involving new microorganisms where researchers are unsure of the final use would be subject to TSCA section 5.'' Some commenters requested that EPA confirm that researchers working with new microorganisms for the purposes of developing products such as drugs and foods would not be subject to TSCA section 5.

EPA did not intend to imply that researchers using microorganisms would automatically be subject to section 5 requirements, without consideration of whether the research was conducted for a commercial purpose. The commenters apparently misunderstood EPA's proposed preamble discussion, which was intended only to explain the analytical steps to follow in determining whether researchers would be required to file a TERA notice.

Researchers attempting to determine potential TSCA section 5 obligations for R&D activities would first ascertain whether the use or potential use of the microorganism is specifically excluded from TSCA section 5. Uses that are not specifically excluded are subject to TSCA. EPA anticipates that much R&D activity with microorganisms will not be subject to TSCA. If the research is conducted with the intention of developing a product, the use of which would be subject solely to the Federal Food, Drug, and Cosmetic Act (FFDCA), the research would not be subject to TSCA. For example, with regard to biotechnology companies engaged in development of drugs, TSCA

specifically excludes substances used in the production of foods, drugs, cosmetics and medical devices from TSCA jurisdiction. Microorganisms used in the production of foods, drugs, cosmetics and medical devices are similarly excluded from TSCA. However, researchers unsure of the final use or potential use, or who intend to develop a product, a use of which could be subject to either FIFRA or TSCA, will need to consider whether they are subject to TSCA. Further discussion of the comments and EPA's responses can be found in the Response to Comment document at Unit IV.A. If the research is subject to TSCA, researchers may be eligible for one of the exemptions discussed in Units IV.C. and E. of the Response to Comments document.

2. *Commercial R&D.* The most substantial decision made in developing the final rule was selection of the definition of commercial purposes for R&D activities. This issue is discussed in detail in the proposed rule (59 FR 45537-39) and in the Response to Comments document in Unit IV.B.

TSCA section 5(i) limits all section 5 screening to activities for commercial purposes. Research on traditional chemicals is not generally affected by the commercial purposes limitation, because EPA's current regulatory definition of small quantities for R&D using traditional chemicals (any amounts reasonably necessary for research) at § 720.3 effectively exempts most research with these chemicals from section 5 review. However, because of the ability of microorganisms to reproduce, disseminate and spread, EPA believed that it was necessary to review these products at an earlier stage and therefore proposed an interpretation to address testing with microorganisms. Consequently, EPA developed a different small quantities definition for microorganisms and is imposing reporting and recordkeeping requirements on certain R&D activities. Researchers utilizing microorganisms, therefore, will need to consider whether their R&D activities would be considered commercial, and therefore subject to TSCA section 5 requirements.

During development of regulations on biotechnology over the past several years, EPA has received numerous public comments that differ substantially on how the Agency should apply the commercial purposes definition to research. Of particular concern has been the appropriateness of an EPA oversight system based on the status of an activity as commercial or noncommercial rather than on potential risk. Because of the past difference in public opinion, EPA proposed three approaches to defining what constitutes commercial activities: (1) Using indicia to determine commercial purposes; (2) presuming all environmental testing is commercial; and (3) presuming that all environmental research is commercial but offering an opportunity for researchers to rebut the presumption. Rather than indicating a preference, EPA discussed in the preamble the advantages and disadvantages of each approach and asked for public comment on which approach would be appropriate.

Comments received on the proposed rule produced no prevailing opinion on how EPA should define ''commercial purposes'' for R&D. In considering this issue, EPA turned to its experience over the past several years responding to researchers who inquired about the status of their field tests under TSCA. EPA based its responses to those inquiries, in part, on its approach to traditional chemicals under TSCA. Under the TSCA section 5 program for traditional chemicals, EPA determines whether an activity is for a commercial purpose based on whether the purpose of the activity is to have an immediate or eventual commercial advantage. EPA found that determining the commercial status of research microorganisms based on indicia similar to those used for traditional chemicals functioned adequately. Therefore, EPA has decided that for this final rule when determining whether their R&D activities with microorganisms would be ''for commercial purposes,'' researchers will need to consider the indicia listed in § 725.205(b).

The indicia approach applies to R&D in laboratories and other contained structures as well as to intentional testing in the environment and is discussed in more detail below.

Researchers who are attempting to determine whether their research would be for ''commercial purposes'' should consult § 725.205(b). Under § 725.205(b)(1) researchers would first consider whether any of the funding for the proposed research comes directly from a commercial source. Any direct industry involvement in or direct funding of an activity at a noncommercial institution is for commercial purposes. This would include the use of company funds to develop the microorganisms or the use of a company-provided microorganism in the research. If any portion of the research is funded directly by a commercial source, then the research is ''for commercial purposes.'' Thus, if any part of the research is funded by contract, joint venture, or other financial arrangement, with the purpose of eventually producing a commercial product, the research is subject to the requirements of section 5. For example, laboratory work or field tests conducted under a research contract between a company and a university or a researcher where patent rights or trade secrets are held by the company, would be considered commercial R&D.

If researchers do not fall under § 725.205(b)(1), they should next consider potential indirect indicators of commercial intent as reflected in § 725.205(b)(2). They would need to consider, for example, whether the research is directed towards developing a commercially viable improvement of a product already on the market, or whether they are seeking commercial funding or a patent.

If researchers do not fall within the scope of § 725.205(b)(1) or (b)(2), their research may be considered noncommercial. For example, an outright gift from a company to a university or a researcher without the company directing or otherwise controlling the research for which the funds are to be used or the use to be made of the results of the research conducted, would not be considered direct funding under § 725.205(b)(1). As such, the research conducted using such a gift would be considered noncommercial R&D, assuming the researcher also does not believe the microorganism has the potential to be developed as a commercial product in the future or intend to obtain an immediate or eventual commercial advantage as described under § 725.205(b)(2). Therefore, if a researcher is planning to conduct laboratory work or field tests or other environmental testing using funds which were part of an outright gift from a company to the university with no strings attached, that research would be considered noncommercial R&D.

If none of the funding or support for the laboratory work or field test or other environmental testing, including development of the microorganism, comes from a commercial source, then the researcher must consider whether he or she intends to pursue the development of the new microorganism as a commercial product in the future, should testing show potential commercial viability. The researcher is responsible for judging when commercial intent exists for his or her particular research project. EPA recognizes that in the initial stage of research projects, researchers may not envision an eventual commercial purpose for their microorganisms. However, if, during the course of their investigations, researchers determine

that their microorganism has a potential commercial use which they intend to pursue, they then become subject to the requirements of TSCA section 5 and this rule, and their further research activities must be in compliance with this rule. EPA has provided examples of research that has an immediate or eventual commercial advantage in the regulatory text at § 725.205(b)(2)(i) through (iv). An example of ''other evidence'' of a commercial application cited under § 725.205(b)(2)(iv) would be if the researcher has engaged in serious discussions with a company concerning marketing or commercializing the microorganism if initial research is successful. If researchers have difficulty deciding whether their research is for commercial purposes, they are encouraged to consult EPA.

The above approach represents a modified version of the indicia of commercial purposes approach discussed in the preamble to the proposed rule. EPA has adopted this modified version for the following reasons. All research conducted directly by a commercial entity is clearly for commercial purposes, as the court decided in *The Dow Chemical Company v. EPA*, 605 F.2d 673 (3d Cir. 1979). Consequently, if a business directly funds a research activity for potential product development, the activity is for commercial purposes, even if the research activity is conducted at an academic institution. EPA has chosen to focus on the source of funding for the specific laboratory work or field test or other environmental testing as the appropriate indicator of commercial intent, because EPA recognizes that it can be difficult to trace sources of funding at the institutional level and agrees with the commenter who stated that ''there is no logical basis for the assertion that commercial support of one narrowly defined project changes the fundamental academic nature of every other activity conducted elsewhere in the institution.''

EPA's definition of commercial purposes is consistent with the current regulations for traditional chemicals, which define a commercial activity as one undertaken with the purpose of obtaining an immediate or eventual commercial advantage. For example, this is the definition in § 720.3(r), which defines ''manufacture or import for commercial purposes,'' and § 721.3, which defines ''process for commercial purposes.'' Consequently, EPA has adopted the idea in § 725.3, which defines for microorganisms ''manufacture, import, or process for commercial purposes.'' Similarly, § 720.30(i) provides that ''non-commercial research and development'' consists of activities conducted by academic, government, or independent not-for-profit organizations ''unless the activity is for eventual commercial purposes.'' EPA has developed a comparable exclusion for non-commercial R&D uses of microorganisms by including a definition of ''commercial purposes for research and development activities'' at § 725.205(b). As noted above, this commercial indicia approach applies to R&D in laboratories and other contained structures, as well as to intentional testing in the environment.

EPA's experience over the past several years responding to researchers inquiring about the status of their environmental research under TSCA indicates the following points. All of the researchers identified the sources of their funding for the particular experiments. Generally they were able to readily indicate whether they believed there was a future commercial application for the microorganism which they intended to pursue. In most cases where a company was directly funding field tests to be conducted at university sites, the company contacted EPA directly and took responsibility for preparation of the PMN. In one case, researchers were being funded by Federal agencies but were using company-owned microorganisms subject to a TSCA section 5(e) consent order. The company asked EPA to modify the consent order to allow the company to give the microorganisms to the researchers for use in their field tests. Although the company made the original request, the researchers submitted information about their field tests to EPA. Therefore, researchers should contact EPA if they are planning field tests involving intergeneric microorganisms supplied by a company. In most cases, a TERA would be required.

In several cases where researchers contacted EPA regarding the status of their field tests, EPA found that field tests using intergeneric microorganisms were not subject to TSCA, because the field tests were being funded by other Federal agencies and the researchers did not foresee future commercial uses for their microorganisms. Finding that these field tests did not constitute commercial R&D under TSCA, EPA directed the researchers to the Federal agencies which were the primary funding sources for the field tests and suggested that researchers should, at a minimum, obtain reviews from these agencies under relevant authorities, including meeting the National Environmental Policy Act (NEPA) responsibilities of these other agencies.

Although EPA has chosen in this final rule to follow an approach for ''commercial purposes'' similar to its approach for traditional chemicals, EPA recognizes that there are no differences in risk depending on funding source. EPA takes seriously its responsibilities to address risk and intends to pursue approaches laid out in the Coordinated Framework for Regulation of Biotechnology (51 FR 23302, June 26, 1986) to ensure an adequate network of oversight of R&D activities. To this end, EPA will work closely with other agencies, particularly NIH.

3. *Microorganisms eligible for the R&D small quantities exemption.* TSCA section 5(h)(3) exempts from section 5 screening, chemical substances manufactured or processed in small quantities solely for R&D and directs EPA to define small quantities by rule. EPA's regulations for traditional chemicals at § 720.3(cc) define ''small quantities solely for R&D'' as those quantities that are ''not greater than reasonably necessary for ...[R&D] purposes.'' This definition of small quantities for R&D has been appropriate for traditional chemical substances, because these chemicals do not have the ability to increase their own volume or amount. However, living microorganisms may reproduce and increase beyond the number initially introduced, may establish in the environment, and may spread beyond the test site. Once they are released into the environment or are no longer contained, there is no longer an assurance they will remain ''small quantities.''

Therefore, EPA's definition at § 725.3 of ''small quantities'' for microorganisms is restricted to microorganisms used under conditions that meet the requirements of § 725.234, which are designed to reduce the probability of establishment by reducing the number and frequency of viable microorganisms emitted from a facility. The small quantities exemption for microorganisms is also referred to as the ''contained structures'' exemption, because § 725.234(c) limits the exemption to R&D activities in contained structures.

Most of the comments EPA received on its application of the section 5(h)(3) exemption to R&D activities with microorganisms in contained structures requested clarification with regard to the use of research microorganisms in commerce, the use of genetic libraries, and coordination with the NIH Guidelines. None of the commenters provided EPA with new information

that would cause EPA to reconsider or change the basis for its decision to restrict the section 5(h)(3) exemption to microorganisms used under conditions meeting the requirements of § 725.234. Consequently EPA has adopted the proposed regulatory text for this exemption with some revisions. The requirements for this exemption are found in the regulatory text in §§ 725.232, 725.234 and 725.235. These issues are discussed in the proposed rule (59 FR 45539-42) and in the Response to Comments document in Unit IV.C.

For purposes of clarification, EPA has modified requirements originally included in proposed § 725.235. Most of the proposed language was adapted, with little revision, from the small quantities exemption for traditional chemicals at § 720.36. Upon further reflection, EPA has determined that some of that language is not appropriate for microorganisms. Therefore, EPA has deleted proposed § 725.235(a)(2), which provided an exemption from the small quantities notification requirements for R&D in a laboratory, and proposed § 725.235(e), which related to impurities and articles. Additionally, the requirements at proposed § 725.235(c), (d), and (f) have been moved to § 725.205(d), (e), and (f), respectively, as these requirements apply to all R&D activities under subpart E. EPA has further revised § 725.205(f) to specifically exclude microbial pesticides by referring to the microbial pesticide notification requirements that were promulgated in September 1994 (59 FR 45612).

EPA disagrees with the commenter who stated that EPA had not justified the ''wholesale removal of the R&D exemption provided by Congress.'' TSCA section 5(h)(3) does not provide a complete exemption for all R&D, nor has EPA removed the statutory exemption wholesale. Rather, TSCA section 5(h)(3) exempts from section 5 reporting chemical substances manufactured or processed in small quantities for R&D and specifically directs EPA to define ''small quantities'' by rule. EPA has determined that the definition of ''small quantities'' applied at § 720.3 to traditional chemical substances cannot be applied to all R&D activities involving microorganisms for the reasons discussed in the proposed rule (59 FR 45539-40).

4. *R&D subject to TSCA and another Federal agency*. In the proposed rule, EPA discussed situations where R&D activities might be subject to both TSCA and another Federal authority. EPA suggested different approaches to dealing with overlapping jurisdiction, depending on whether the R&D activities were conducted in a contained structure or involved intentional environmental testing.

EPA proposed a complete exemption from EPA-specific reporting under TSCA section 5(h)(4) for research on new microorganisms in contained structures, if the research is regulated or funded by a Federal agency which has agreed to abide by the NIH Guidelines.

In the proposed rule (59 FR 45542-43), EPA discussed exempting from TSCA section 5 requirements the intentional environmental testing of new microorganisms, when another Federal agency has clear regulatory authority and EPA determines that the other Federal agency's review addresses criteria equivalent to those which would be evaluated under TSCA section 5. Specifically, EPA indicated that it was working with USDA/APHIS to develop an exemption from TSCA section 5 requirements for R&D field tests reviewed by APHIS under the Federal Plant Pest Act and the Plant Quarantine Act.

Several commenters supported the proposal to exempt from EPA requirements those researchers who mandatorily comply with the NIH Guidelines. Some commenters stated that researchers who voluntarily comply with the NIH Guidelines should also be exempt from the TSCA section 5(h)(3) requirements. Some commenters specifically supported EPA's discussion of potentially deferring to other agencies' reviews and determinations, when appropriate, for intentional environmental testing of new microorganisms. It was requested that EPA clarify its relationship with USDA/APHIS. Some commenters suggested extension of EPA's proposal to defer to other Federal agencies.

EPA has retained at § 725.232(b) its complete exemption from TSCA section 5 obligations for research on new microorganisms in contained structures, if the researcher is receiving funds from another Federal agency which requires compliance with the NIH Guidelines. This includes all research, whether directly funded by an agency or not, at a university or institution that adheres to the NIH Guidelines on an institution-wide basis as a condition of receiving Federal funds. EPA developed this exemption to avoid duplicative oversight with other Federal authorities. Researchers who are complying with the NIH Guidelines voluntarily or through vehicles such as contracts or local regulations, will not be eligible for the exemption at § 725.232, because their research is not being overseen by another Federal agency. However, as discussed further below, EPA believes that anyone who is complying with the NIH Guidelines should be able to meet the requirements of §§ 725.234 and 725.235 with little difficulty.

EPA agrees in principle with commenters who believe that, when consistent with the requirements of the statutes involved, products subject to another statute as well as to TSCA need only be regulated by one of those agencies. Presently, EPA has identified the Plant Pest Act and Plant Quarantine Act administered by USDA/APHIS as presenting some degree of overlapping jurisdiction with TSCA for microorganisms. At this time EPA and USDA do not know of any products subject to overlapping jurisdiction. Should such a situation arise, EPA will work with APHIS to develop a proposed exemption from TSCA section 5 requirements for R&D field tests subject to overlapping jurisdiction. In the future, should other cases of duplicative oversight arise, EPA will work with the other agencies involved to develop an appropriate solution. These issues are discussed in the Response to Comments document in Unit IV.D.

5. *Requirements for small quantities/contained R&D exemption*. EPA indicated in the proposed rule (59 FR 45540) that for those researchers who are voluntarily complying with, but are not subject to, the NIH Guidelines, the requirements of the R&D small quantities exemption at § 725.234 could be met by having the principal investigator (PI) serve as the technically qualified individual (TQI) required by § 725.234(b) and keep records indicating that they abide by and are following the NIH Guidelines for the specific TSCA-subject R&D activities. However, EPA proposed to rely on the experience and judgement of the TQI to select containment and inactivation controls appropriate to the microorganism(s) being utilized. In some cases, the TQI could find it appropriate to use NIH Guidelines, and in others, the TQI might not. EPA took this position, because EPA recognized that many different kinds of microorganisms displaying a wide range of characteristics could potentially be used in research and that the type of controls appropriate for one microorganism might have limited relevance to other microorganisms. This issue is discussed in the Response to Comments document in Unit IV.E.

Several commenters indicated support for use of the NIH Guidelines and requested clarification and/or made suggestions concerning the relationship of the NIH Guidelines to the R&D small quantities exemption. While EPA considers the NIH Guidelines to provide

the primary standard for laboratory research, EPA continues to believe that it is appropriate to allow TQIs to have the option of relying on their experience and judgement in selecting appropriate containment as opposed to being forced to rely solely on the NIH Guidelines. In addition, not all TSCA-subject microorganisms will also be subject to the NIH Guidelines, since the Guidelines focus on research involving recombinant DNA (rDNA) molecules and EPA focuses on intergeneric microorganisms as ''new.'' Therefore, some researchers will need to rely for some activities on EPA's criteria at § 725.234, since their activities will not be covered by the NIH Guidelines. In structuring its approach, EPA believes it has provided an appropriate measure of flexibility to researchers. Additionally, EPA believes that those researchers who currently comply with the NIH Guidelines, but are not eligible for the exemption under § 725.232, nevertheless can comply with the requirements of §§ 725.234 and 725.235 with little additional burden beyond that imposed by the NIH Guidelines.

With respect to the requirement at § 725.234(d)(2) for certification by an authorized official, EPA recognized in the proposal (59 FR 45540) that Institutional Biosafety Committees (IBCs) and similar committees are charged with assessing the containment selected by researchers. EPA encourages the active use of such committees and agrees that an authorized official may be an IBC chair. EPA also evaluated the comments on the burden imposed by recordkeeping for the R&D small quantities exemption. As EPA noted in the proposal, EPA believes that persons following the NIH Guidelines would keep records as part of normal procedures at an institution where IBCs are responsible for ensuring the safety of research. Such records are likely to be adequate for meeting the provisions at § 725.234(d)(3). This issue is discussed in more detail in the Response to Comments document in Unit IV.E., which also provides a comparison of the NIH Guidelines and the requirements of §§ 725.234 and 725.235.

Several commenters suggested that EPA adopt the NIH Guidelines as a requirement for the R&D small quantities exemption. As discussed previously, EPA believes that it is more appropriate to show researchers how the use of the NIH Guidelines can fulfill the requirements of the R&D small quantities exemption and has included a comparison discussion in the Response to Comments document in Unit IV.E.1. In general, EPA expects that companies currently complying with the NIH Guidelines will also be able to satisfy the requirements of the R&D small quantities exemption. Although the NIH Guidelines do not explicitly state that documentation of the notification is required, the requirement for such documentation can be readily inferred in section IV. of the NIH Guidelines. Because TSCA explicitly requires such notification, researchers may still need to verify that the documentation maintained pursuant to the NIH Guidelines includes documentation of the notification as specified in § 725.235(c)(1).

Like the NIH Guidelines, EPA's regulations cannot anticipate every research situation. Therefore, using the comparison of the NIH Guidelines and the requirements of §§ 725.234 and 725.235 as guidance, researchers subject to TSCA section 5 and complying with the NIH Guidelines should evaluate their specific research situation to determine whether their use of the Guidelines also fulfills the requirements of §§ 725.234 and 725.235.

6. *Exemptions from TERA reporting for certain R&D activities conducted outside a structure.* In the proposed rule, EPA discussed a process for exempting small-scale field tests of certain microorganisms from TERA reporting. To qualify for the exemption, certain criteria regarding the recipient microorganisms, the source(s) and characteristics of the introduced genetic material, and the conditions of use would need to be met. EPA proposed certain strains of *Bradyrhizobium japonicum* and *Rhizobium meliloti* as candidates for exemption from TERA reporting, based on EPA reviews of voluntary PMNs for these microorganisms submitted under the 1986 Policy Statement and field test data generated in these field trials. In response to comments, EPA has modified some of the specific conditions for the exemption. Some commenters expressed concern about EPA's proposal to exempt strains containing antibiotic resistance markers from any source. EPA has determined that for the exemption described at § 725.239, it will follow the conservative course of only allowing use in *B. japonicum* and *R. meliloti* of those markers EPA has reviewed for use in these microorganisms. This approach would ensure that the probability of presenting unreasonable risk would be low for each antibiotic resistance marker. The regulatory text at §§ 725.239(a)(2)(ii)(A)(*1*) and 725.239(b)(2)(ii)(A)(*1*) has been modified to limit structural genes encoding marker sequences to those encoding resistance to the aadH gene, which confers resistance to streptomycin and spectinomycin, in these microorganisms. Based on EPA's analysis of use of this marker in rhizobia, and including consideration of the advice of the January 4, 1995 BSAC Subcommittee, the use of streptomycin and/or spectinomycin resistance markers in *B. japonicum* and *R. meliloti* currently meets this requirement of the exemption.

EPA recognizes that the exemption at § 725.239 is narrow and may only apply to very few research projects. It may be the case in the early years of the TERA program that TERA exemptions are narrowly written to apply to specific microorganisms that have completed TERA review. However, EPA hopes that in the longer term as EPA gains greater experience reviewing intergeneric microorganisms for environmental uses, broader exemptions can be written. To that end, EPA has placed general requirements for the TERA exemption in § 725.238 and will use § 725.239 to list certain microorganisms for the exemption and the specific conditions of use as needed.

7. *TERA reporting process.* Under section 5(h)(4), EPA proposed to conditionally exempt from MCAN notification certain R&D activities involving new microorganisms. The exemption is conditional, since researchers must submit a TERA, an abbreviated notification. Due to the availability of other exemptions for R&D activities discussed in this preamble, EPA expects that the TERA will be used primarily for environmental research. In the proposed rule (59 FR 45535), EPA indicated that its goal was to review TERAs in 60 days, but that for good cause, EPA could extend the initial TERA review period by an additional 60 days, for a total of 120 days. This condition, the information requirements for submitters, and the TERA approval process have not been changed from the proposed rule. This exemption is discussed in the proposed rule (59 FR 45535-36, 45543-44) and in the Response to Comments document in Unit IV.G.

EPA received some comments supporting the TERA process. Other commenters who opposed the use of the TERA process and stated that some of the information requirements were too extensive, also stated that specific monitoring data should be required. EPA has made minor revisions to the TERA requirements at §§ 725.250 through 725.288. Issues raised about state coordination are discussed in the next section.

EPA believes that it is necessary to establish a review and approval process

specifically for R&D activities involving environmental release. While many field tests of new microorganisms will be determined to pose low risks, this assumption cannot be made for field tests in general, and thus EPA finds some type of review is warranted. However, EPA recognizes that full MCAN reporting also may not be warranted. Therefore, EPA has chosen to develop a review and approval process specifically tailored to address R&D.

EPA believes that the information requirements proposed for the TERA are appropriate. EPA must have sufficient information to evaluate the health and environmental effects of a planned field test. However, because a variety of microorganisms are potentially subject to TSCA, the requirements indicated in § 725.255 are necessarily broad. Not all of the requirements are equally applicable to all microorganisms. Submitters are encouraged to consult with EPA prior to preparing TERAs, so that appropriate information needs and concerns may be identified.

EPA has made minor changes to the regulatory text at § 725.270 to clarify that EPA is approving or denying the TERA. Therefore, the term ''TERA agreement'' which was used in the proposed rule has been changed to ''TERA approval.'' In addition to approving or denying the TERA, EPA may provide, in the TERA approval, conditions under which the R&D activity described in the TERA must be conducted in order for EPA to make the TSCA section 5(h)(4) finding that the R&D activity will not present an unreasonable risk to health or the environment. During the TERA review period, EPA may identify issues that need further information before EPA can give its approval for the R&D activity to proceed. EPA or the submitter may suspend the review period, if necessary. When EPA approves a TERA, the submitter must conduct the R&D activity only as described in the TERA, and any amendments to the TERA, and under any conditions specified by EPA in its approval of the TERA.

8. *Options for oversight of R&D activities*. As discussed above, EPA proposed an approach for oversight of R&D activities which included a variety of exemptions from the full 90-day reporting process required for general commercial use activities. EPA's goal was to provide a flexible process which tailored oversight to the level of risk. EPA asked for comment on its R&D exemptions, all of which have been discussed above, and indicated that the public could suggest other options for consideration. Options for oversight suggested by the commenters are discussed in the Response to Comments document in Unit IV.H. For a variety of reasons, EPA concluded that the alternatives suggested would not adequately permit EPA to fulfill its statutory duties under TSCA section 5.

Some commenters, while indicating that the R&D exemptions were comprehensible, did not believe that level of oversight correlated to level of risk. EPA disagrees with comments that the level of oversight imposed in its R&D exemptions is not correlated to level of risk. EPA discusses its view of the relationship between risk and the TSCA definition of ''new microorganism'' in Unit II.D. of the Response to Comments document. EPA has chosen to implement its R&D oversight in a manner which distinguishes between R&D activities in contained structures and R&D activities involving intentional release to the environment because of the greater overall potential in the latter case for survival, dissemination, and exposure to the microorganisms. Within this broad structure, EPA has developed several exemptions which recognize the differing risk potentials presented by different settings and organisms. These exemptions have been discussed above and are discussed in greater detail in Units IV.C. through G. of the Response to Comments document.

In the proposed rule (59 FR 45536-37), EPA briefly discussed an alternative exemption for certain R&D releases. This alternative would contain requirements for documentation and recordkeeping by a TQI and certification by an authorized official. EPA is not finalizing this option at this time. However, EPA plans to propose an exemption along these lines at a later date to allow the public an opportunity to comment on the new information on which EPA is relying to support the exemption.

D. Other Issues

1. *Microorganism definition*. In the proposed rule (59 FR 45550-51), EPA defined ''microorganisms'' in § 725.3 as those organisms classified under the 5-kingdom system of Whittacker (Ref. 5) in the kingdoms Monera (or Procaryotae), Protista, and Fungi, the Chlorophyta and the Rhodophyta of the Plantae, and viruses and virus-like particles. Therefore, this definition includes, but is not limited to, bacteria, protozoa, fungi, mycoplasmas, mycoplasma-like organisms, spiroplasmas, microphytoplanktons, green and red algae, viruses, and virus-like particles (e.g., viroids, satellites, and virusoids). Should new categories of organisms within the Monera, Protista, Fungi and the Chlorophyta and Rhodophyta of the Plantae be identified, these would also be considered microorganisms under this definition.

EPA proposed to treat viruses of other microorganisms (also termed phages) as MGEs. EPA's MGE policy is discussed in the proposed rule (59 FR 45528) and in Unit II.D. of the Response to Comments document. In the proposed rule, EPA indicated that it was not able to identify uses of viruses of macroorganisms that might be subject to TSCA. EPA asked if it was appropriate to apply the intergeneric interpretation to viruses of macroorganisms if TSCA uses for such viruses were identified.

Commenters thought the proposed definition of ''microorganism'' was reasonable and included the appropriate organisms. Thus, EPA will retain the definition of ''microorganism'' as discussed in the proposed rule and found in the regulatory text in § 725.3. EPA has modified the definition to clearly indicate in the regulatory text that EPA is using the 5-kingdom classification of Whittacker. Additionally, as discussed in the proposal, EPA will treat phages as MGEs. No commenters identified current or imminent TSCA uses of viruses of macroorganisms. Therefore, EPA believes the best use of limited resources would be to develop an approach under TSCA for viruses of macroorganisms in the future if TSCA uses are identified. The definition of microorganism is discussed in the Response to Comments document in Unit V.A.

2. *TSCA Inventory*. EPA described in the proposed rule (59 FR 45551-52) how it planned to explicitly list microorganisms on the TSCA Inventory and the rationale for the proposed listing. EPA proposed to identify microorganisms on the Inventory using a taxonomic designation and a consistent set of supplemental information on phenotypic and genotypic traits necessary to identify the microorganism as precisely as possible. Additionally, EPA indicated that it was considering requiring that microorganisms listed on the Inventory be deposited in a recognized culture collection.

In the proposed rule, EPA advised manufacturers and importers of any of the 192 microorganisms reported in 1978 for the initial TSCA Inventory that EPA planned to remove from the Inventory the explicit listing of these microorganisms. EPA believed that most of these microorganisms are not intergeneric; therefore they would be automatically included on the Inventory

and do not need to be explicitly listed. EPA asked manufacturers and importers of these microorganisms to inform EPA if any of the microorganisms were intergeneric and should not be removed from the Inventory.

In response to EPA's request for comments on developing a requirement for culture collection deposit, several commenters strongly opposed the development of any requirement for deposit of a microorganism in a culture collection. One commenter was concerned about the effect that an EPA requirement would have on patent protection. Others believed that such a requirement would be unnecessary and onerous at the R&D stage. EPA has considered the concerns raised by commenters who oppose the culture collection requirement and has decided that deposit of new microorganisms in recognized culture collections is not necessary. Therefore, EPA has not made this a requirement for microorganisms subject to TSCA section 5 reporting.

Commenters asked that EPA clarify the type of taxonomic designation to be used for Inventory listing and indicate how revisions to taxonomy would be accommodated on the Inventory. Others asked EPA to clarify what is ''new'' under TSCA, particularly with respect to minor changes made during strain improvement of microorganisms already listed on the Inventory. EPA agrees that Inventory listing for intergeneric microorganisms is more complex than listing for most traditional chemicals. As indicated above, EPA plans to consider modifications and clarifications to its intergeneric interpretation in the future. Future modifications to the intergeneric interpretation will also affect how microorganisms are listed on the Inventory. A subcommittee of EPA's BSAC, which met on July 22, 1991, when questioned on EPA's proposed approach to Inventory listing for microorganisms, suggested that EPA continue on a case-by-case basis and gain additional experience before finalizing its requirements for Inventory listing. Therefore, EPA believes it prudent to defer a fuller development of Inventory listing for microorganisms until it has considered modifications to the intergeneric interpretation and gains additional experience. Meanwhile, EPA will use a case-by-case approach to Inventory listing for new microorganisms. Inventory issues are discussed in the Response to Comments document in Unit V.B. EPA has provided some clarification regarding use of taxonomy in the Response to Comments document in Unit II.D. Additional guidance on Inventory listing may also be found in the proposed rule preamble (59 FR 45551-52).

Commenters requested that EPA provide a ''grandfather'' period by opening up the Inventory for 1 year after the final rule is published to allow products currently in commerce to be listed. One commenter requested that intergeneric products currently in commerce be automatically placed on the Inventory. EPA disagrees with the commenters who believe that a ''grandfather'' period is necessary. Since the publication of the 1986 Policy Statement in June 1986, EPA has required PMN reporting for general commercial use of intergeneric microorganisms subject to TSCA. Although different scopes of oversight have been discussed in the intervening years, the Policy Statement has remained in effect all that time. Therefore, EPA believes that the public has had sufficient notice of its program and that intergeneric microorganisms currently in commerce and being used for TSCA purposes should already have been reported to EPA.

In response to the EPA proposal to delist 192 microorganisms currently listed on the Inventory by genus and species only, commenters discussed their concerns. One commenter stated that there was no information about the phenotypic characteristics of these strains or about any introduced DNA. EPA wishes to clarify its position on microorganisms currently listed on the Inventory. These microorganisms can be divided into two groups: (1) Those reported to the initial Inventory in the late 1970s, and (2) those listed after EPA's review of PMNs and receipt of Notices of Commencement to manufacture. EPA has no concerns about the Inventory status of the second group, because these microorganisms were all reported to EPA under the 1986 Policy Statement and therefore are intergeneric and are appropriately explicitly listed. The listings for these microorganisms include descriptive information to specifically identify them beyond the genus and species designations.

Such is not the case for the first group, the 192 microorganisms reported for the initial Inventory in the late 1970s. As one commenter noted, these microorganisms are primarily listed by genus and species. EPA believes that most of these microorganisms are naturally occurring or have been modified by methods that do not involve the introduction of DNA from an organism in another genus and thus in many cases would not need to be explicitly listed. To confirm this assumption, EPA requested comment from persons manufacturing or importing any of the 192 microorganisms. No comments were received on the status of these microorganisms. EPA wishes to ensure that all microorganisms which are explicitly listed on the Inventory are intergeneric and are described in a consistent manner. Therefore, EPA has concluded that the 192 microorganisms are not intergeneric and, thus, are automatically on the Inventory under § 725.8(b). EPA will remove the explicit listings from the Inventory in a separate action under the authority of TSCA section 8(b).

3. *Confidential Business Information*. EPA proposed to require upfront substantiation of confidential business information (CBI) claims in all submissions for general commercial uses of microorganisms. Under the proposal, anyone submitting a MCAN, a Test Marketing Exemption (TME), Tier I certification, or a Tier II exemption request would be required to substantiate CBI claims at the time of submission. With respect to upfront substantiation for TERAs, EPA proposed two options and asked for public comments on both. Option 1 would have required upfront substantiation of all CBI claims in TERAs. Option 2 would not have required upfront substantiation of CBI claims in TERAs, but would only require CBI substantiation after EPA received a Freedom of Information (FOIA) request.

One commenter asked for additional clarification of EPA's CBI policy for microorganism submissions. Two commenters supported EPA's proposal to require upfront substantiation of CBI claims for submissions for both research and general commercial use. However, most commenters opposed upfront substantiation of CBI claims in R&D submissions, indicating that the requirement was too burdensome for R&D, especially because it was important to have proprietary protection for R&D activities. Some commenters specifically opposed upfront substantiation of CBI claims in submissions for R&D submissions only. Others opposed upfront substantiation of CBI claims in any microorganism submission, arguing that EPA's approach to substantiation of CBI claims in microorganism submissions should not differ from EPA's approach to substantiation of CBI claims in traditional chemical submissions.

Considering the competing interests in the comments received and the burden imposed on industry, EPA has decided not to require upfront substantiation of CBI claims in TERAs

but will retain the upfront substantiation requirement for CBI claims in MCANs, TMEs, Tier I certifications, and Tier II exemption requests. In the past several years, submitters of voluntary PMNs for field tests of new microorganisms have claimed very little, if any, CBI. However, if, in the future, EPA finds that CBI claims have increased in TERAs and that insufficient information is available to the public during the shorter TERA review period, EPA may find it necessary to reconsider the decision not to require upfront substantiation of CBI claims in TERAs. At this time, EPA has revised the regulatory text at § 725.94(a)(2) to delete the requirement for upfront CBI substantiation. In the case of general commercial use submissions, EPA believes that the upfront substantiation requirement for CBI claims will impose little burden on submitters of MCANs, TMEs, Tier I certifications, and Tier II exemption requests. Because persons preparing these submissions are ready to put their products on the market, they will have a greater understanding of the products and any CBI issues and, therefore, should be able to justify why it will continue to be necessary to keep certain information confidential. In addition, given the shorter review period for TMEs and Tier II exemption requests, sufficient information may not be made available to the public if upfront substantiation of CBI claims is not required. In particular, EPA may not be able to comply with all deadlines if a FOIA request is received.

4. *Antibiotic resistance markers*. EPA did not establish a general policy for addressing antibiotic resistance markers as part of its proposed rule. Use of antibiotic resistance markers was only discussed as part of the exemption from TERA reporting proposed for certain modified strains of *Bradyrhizobium japonicum* and *Rhizobium meliloti* at proposed § 725.239. Although EPA only discussed the use of antibiotic resistance markers as part of its proposal for exempting two specific microorganisms from TERA reporting, EPA also received comments addressing more generally the use of antibiotic resistance markers. As discussed above, EPA has responded to comments on the TERA exemption, including revising the regulatory text at § 725.239 regarding use of antibiotic resistance markers in those microorganisms. The general discussion of antibiotic resistance markers can be found in the Response to Comments document in Unit V.E.

EPA recognizes that many factors affect the health and safety evaluation of use of antibiotic resistance markers. The use of antibiotic resistance markers is a complicated issue which has ramifications for products beyond the scope of TSCA. Because of the complexity, EPA will not issue a general policy on the use of antibiotic resistance markers, but will continue to evaluate their use in specific microorganisms on a case-by-case basis as submissions are received. EPA plans to pursue this issue in consultation with other Federal agencies who have an interest in this issue.

5. *State coordination*. The proposed rule discussed EPA's procedures under the 1986 Policy Statement for coordinating reviews and sharing scientific information with appropriate State and local authorities (59 FR 45531). EPA proposed to require persons preparing TERA submissions for R&D activities involving release to the environment to provide evidence of having notified appropriate State authorities. This issue is discussed in the Response to Comments document in Unit V.F.

Although one commenter supported EPA's proposed requirement for State coordination, several commenters opposed the requirement. EPA has developed comprehensive procedures to coordinate reviews of submissions and to share scientific information with appropriate State and local authorities to the fullest extent possible without violating TSCA CBI requirements. Comments and concerns raised by the State(s) are given careful attention during the review process. State personnel receive a copy of any document which addresses the conditions under which the R&D activity, generally a field test, can be performed.

EPA's coordination procedures would make researcher notification redundant. Consequently, EPA has revised §§ 725.238(b)(3)(ii) and 725.255(e)(1)(vi) to remove the requirement that submitters include evidence that State authorities have been notified in the TERA exemption certification and TERA submission, respectively. EPA will continue to encourage submitters to advise State and local authorities of their field test plans, although this will not be a requirement. In cases where submitters have informed State and local authorities of their test plans, EPA believes that it is appropriate to require that submitters inform EPA of this notification as part of their submissions.

VI. Economic Analysis

A. Introduction

EPA has prepared a Regulatory Impact Analysis (RIA) assessing the costs, benefits, and associated impacts of regulating new microorganisms under TSCA as set forth in this final rule. A summary of key findings and estimates is presented below.

B. Regulated Community

Although unable to quantify the exact magnitude of activity in biotechnology sectors affected by this rulemaking, the Agency believes that activities involving microorganisms falling within the scope of the final rule comprise a modest share of overall activity. EPA estimates that approximately 130 firms may be involved in commercial R&D or in general commercial use of potentially regulated microorganisms. In terms of revenue, the potentially affected universe appears to be divided sharply between large and small firms. EPA estimates roughly one-half of the companies potentially affected to have annual sales of $40 million or more, while most of those remaining are estimated to have sales under $10 million. For many of these firms, however, revenue generated from activities subject to this rule is believed to represent only a small portion of reported sales. At proposal, EPA also estimated that approximately 300 universities could be affected by the rulemaking. However, in the final rule, because of its implementation of a definition of commercial purposes at R&D based on financial indicia, EPA believes substantially fewer universities will be affected.

C. Costs to Submitters

Due to data limitations and the uncertainties associated with projecting future product development activities in biotechnology application areas subject to the final rule, EPA's estimates of the costs of compliance associated with this rulemaking action have been only partially quantified. In cases where the Agency was able to generate quantified estimates of compliance costs, information which would have permitted the development of more accurate estimates was frequently unavailable; in such cases, the best available information was used, and the estimates are believed to represent a reasonable approximation of actual costs attributable to the rule. A summary of EPA's quantitative cost estimates follows.

In assessing the potential cost impact of the final rule, EPA focussed on two impact years, ''Year 1'' and ''Year 5.'' Year 1 costs are based on the expected costs associated with biotechnology products in the early stage of regulation, while year 5 costs are based on a projection of conditions following some

industry growth, subsequent to rule promulgation. This approach was used because of the relative immaturity of the biotechnology sectors potentially subject to the rule, and the difficulty in attempting to forecast long-term technological and marketing developments. It is emphasized, however, that estimated costs could be significantly higher in the long-term, owing to continued industry expansion.

Four major cost areas were identified, based on an analysis of the requirements of the rule. These areas were: costs incurred in preparing various types of notification submissions or documentation; costs incurred in complying with any post review requirements for monitoring or controls that may be imposed by EPA as a result of risk concerns and uncertainties; costs incurred in substantiating CBI claims; and one-time costs attributable to rule familiarization.

Incremental costs to industry (industry-wide costs net requirements under current policy), estimated based on prevailing wage rates for 1987, were estimated to fall between $890,000 to $2.2 million in year 1 and between $70,000 to $510,000 in year 5. (Year 5 costs account for rule familiarization only in the case of new firms entering the affected market areas, and therefore are much less than year 1 costs, where rule familiarization costs were summed over all affected entities.) Adjusted to reflect current rates (1995 dollars), estimated incremental costs range from $1.2 million to $3.0 million in year 1 and from $95,000 to $690,000 in year 5.

Cost impacts on individual products will vary, depending on application area. Submitters qualifying for full or partial exemptions in connection with microorganisms intended for general commercial use will realize net savings relative to current reporting requirements, while submitters filing in connection with field experiments may realize an increase in regulatory burden under the rule.

D. Costs to the Federal Government

EPA estimated the potential costs to government associated with the final rule. These costs arise in connection with the Agency's processing of individual notification submissions.

In estimating government cost impacts, EPA included costs estimated to be incurred in reviewing each submittal. EPA professionals and members of the Biotechnology Science Advisory Committee were assumed to be involved in such review. In the event that post-review restrictions are placed on a specific activity, such as monitoring during a field test, additional costs attributable to the drawing up of regulatory documentation would be incurred.

Incremental costs to the government were estimated, using 1987 as the base year for valuing compensation, to fall between $115,000 to $122,000 in year 1, while year 5 costs were estimated to fall between -$105,000 (a net savings) to $4,000. Using 1995 as base year for compensation, estimated incremental costs range from $156,000 to $165,000 in year 1 and from -$143,000 to $5,300 in year 5. Savings arise in connection with the substantial number of full reviews that will be avoided due to the exemption provisions of the rule.

E. Benefits of the Rule

EPA's regulation of new microorganisms under TSCA provides benefits to society through reduction of the potential for adverse impacts on health and the environment resulting from the use of such organisms. This benefit is achieved by screening new microorganisms and, when appropriate, imposing controls on microorganism use to protect society from costly and possibly irreversible damages.

For microorganisms in general commercial use, risk reduction attributable strictly to the notification requirements of the final rule would be marginal, as these requirements are based on current policy. However, the rule enhances and contributes to the overall risk reduction potential of the Agency's program under TSCA by providing for a more efficient regulatory strategy relative to current policy, focussing society's resources on those new microorganisms of greatest concern.

For microorganisms in commercial R&D, a greater proportion of overall risk reduction can be attributed to the rule, since reporting in connection with field experiments has been voluntary since 1986. Though the Agency has received voluntary submittals, it is uncertain whether this practice is universal, or whether those filing voluntarily would continue to do so in the absence of these rules.

Over the long-term, regulation is also likely to encourage development of additional information concerning fate and effects of new microorganisms, to encourage the development of microorganisms which pose low concern for effects on human health and the environment, and to encourage public input into decisions concerning the use of new microorganisms.

Benefits may also be realized through the rule's potential impact on the pace of product development. A less uncertain regulatory climate could stimulate business activity, as could a more reassured public. The rule may also reduce the possibility of continued regulatory activity at the State and local level. A national system of potentially uncoordinated rulemaking initiatives could lead to market distortion and hamper competitiveness.

F. Effects of the Rule on Innovative Activity

As a result of this final rule, members of the regulated community may find product development strategies in connection with certain products to require reassessment. Since impacts of this nature could influence the degree of emphasis a firm places on innovative activity, the potential for innovation impacts was investigated.

Though great uncertainty regarding regulatory costs and the potential for a particular product's commercial success make it impossible to estimate innovation impacts quantitatively, the effects of added regulatory costs and delays on a product's lifetime cash-flow was examined. More specifically, a number of plausible product development scenarios were modeled incorporating assumptions regarding expenditures and returns over the course of a product's useful life (from research to obsolescence). Regulatory burdens were then factored into the models, and profit impacts observed.

Impacts realized when total regulatory costs were assumed to reach the upper-bound of EPA's estimated range could result in severe profit reductions in some cases; however, in general, EPA's analysis indicated that impacts should not be prohibitive, particularly when incremental costs are considered. Factors such as length of delay related to regulatory review, return rate, and obsolescence rate all play important roles in determining the impact of EPA's program on innovative activity, and these factors are expected to be highly variable and product-specific.

G. Impacts on Small Business

EPA survey data suggest 42 percent of companies potentially affected by the rule may be small businesses. Though data were not available allowing the Agency to employ standard criteria for assessing the magnitude of small business impacts, the finding of a substantial portion of the regulated community to be small businesses prompted EPA to propose options to provide relief to such businesses. The options considered included reducing CBI substantiation requirements and the elimination of the $100 filing fee.

Comments were submitted indicating concern for the rules impacts on

products of low-value or limited use, and for cost impacts on small companies. Comments were also received on the Agency's proposed alternatives for substantiation of CBI claims in connection with TERA submissions.

With regard to comments regarding smaller-scale product development and cost impacts on small business, EPA finds that, because smaller scale projects would most likely be exempt or involve a relatively limited set of use and exposure scenarios, burdens due to regulatory review would be expected to be minimal; thus, the impacts of greatest concern to smaller institutions or organizations could be frequently mitigated. In considering comments regarding CBI substantiation, EPA has decided not to require upfront CBI substantiation in connection with TERA submissions, as most commenters generally indicated upfront substantiation to be overly burdensome for R&D. Since the Agency considered reducing up-front CBI substantiation requirements for small businesses submitting TERAs in its IRFA, EPA views the CBI substantiation requirements contained in the final rule as providing important burden relief to small businesses (or any business) conducting R&D.

VII. Public Record

EPA has established a public record for this rulemaking (docket control number OPPTS–00049C). The record includes all information considered by EPA in developing this final rule. This includes all information in the docket, as well as information referenced in documents in the docket. A public version of the record without any confidential information is available in the TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G607, Northeast Mall, 401 M St., SW., Washington, DC.

EPA has also made this final rule and certain support documents available electronically. They may be accessed through the Internet at: gopher.epa.gov or the Office of Pollution Prevention and Toxics Biotechnology home page at http://www.epa.gov/opptintr/biotech/.

The record now includes the following items:

1. All prior **Federal Register** Notices, and supporting public dockets, relating to the regulation of microbial products of biotechnology under TSCA. These include:

a. The 1984 Proposed Policy Statement (49 FR 50856, December 31, 1984).

b. The 1986 Policy Statement (51 FR 23302, June 26, 1986).

c. ''Biotechnology; Request for Comment on Regulatory Approach,'' 54 FR 7027, February 15, 1989).

2. Public comments submitted in response to each of the above Notices, including the comments received at the September 1989 Meeting which was held to discuss TSCA regulatory options for oversight of R&D.

3. ''Principles for Federal Oversight of Biotechnology: Planned Introduction Into the Environment of Organisms With Modified Hereditary Traits,'' Office of Science and Technology Policy, 55 FR 31118, July 31, 1990.

4. Reports of all BSAC meetings pertaining to the development of this final rule.

5. The Regulatory Impact Analysis for this final rule.

6. Support documents and reports.

7. Records of all communications between EPA personnel and persons outside EPA pertaining to the development of this final rule. (This does not include any inter- or intra-agency memoranda, unless specifically noted in the Index of this docket.)

8. The docket also includes published literature that is cited in this document.

9. The Response to Comments document responding to the public comments received on the September 1994 proposed rule, and all references cited therein.

VIII. References

The following books, articles, and reports were used in preparing this final rule and were cited in this notice by the number indicated below:

1. Priest, F. G., M. Goodfellow, L.A. Shute, R.C.W. Berkeley. 1987. ''Bacillus amyloliquefaciens. sp. nov., nom.rev.'' Internat. J. Syst. Bacteriol. 37:69-71.

2. U.S. Department of Health Human Services, National Institutes of Health (NIH). 1994. ''Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)'' (59 FR 34496, July 5, 1994).

3. OECD. 1988. ''Recombinant DNA Safety Considerations.'' OECD, Paris.

4. Radian Corporation. 1996. ''Review of past premanufacture notices for potential containment criteria for the 5(h)(4) exemptions in the proposed biotechnology rule.'' U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Chemical Engineering Branch, unpublished. Washington, D.C.

5. Atlas, R. and Bartha. R. 1987. ''Microbial Ecology.'' Chapter 2 ''Survey of Microorganisms,'' pg. 19-60. Benjamin/Cummings Publishing Company, Inc. Menlo Park, CA.

6. Battelle. 1988. ''Final Report on Biosafety in Large-Scale rDNA Processing Facilities.'' 4 volume set. U.S. EPA, Risk Reduction Engineering Laboratory, Cincinnati, OH.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this rule is ''significant'' because it may raise novel policy issues arising out of legal mandates. As such, this action was submitted to OMB for review, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*), the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination is contained in the small business regulatory flexibility analysis, which is included as part of the RIA accompanying this final rule, and is summarized in Unit V. of this preamble. In sum, EPA believes that the mechanisms outlined in the final rule will minimize economic impacts on small businesses as much as possible, and has determined that the rule should not unduly burden small entities, nor hinder the industry as a whole from pursuing a full range of product applications.

Information relating to this determination has been included in the docket for this rule, and will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0012 (EPA ICR No. 574).

This request is for an amendment to an existing ICR covering EPA's Premanufacture Notice (PMN) review program as is necessary to: (1) Collect information on new microorganisms manufactured or imported for commercial use, and certain new microorganisms used for research and development (R&D); (2) reduce reporting

requirements for certain categories of new microorganisms; and (3) require recordkeeping demonstrating compliance with conditions of certain exemptions for new microorganisms.

Section 5 of TSCA gives EPA authority to review chemical substances prior to their manufacture, importation, or processing in the U.S. in order to determine whether such substances may present an unreasonable risk of injury to health or the environment. As explained in the preamble to the proposed rule and affirmed in Unit IV. earlier in this preamble, the Agency has determined such chemical substances to include microorganisms. To make a reasoned evaluation of the risk associated with new microorganisms, EPA needs data on each microorganism's genetic make-up; physical, chemical, genetic or phenotypic properties; manufacturing process; worker exposure; environmental release; production volume; potential industrial, commercial, and consumer use; and related test data. The submission of such data is mandatory, pursuant to section 5(a)(1) of TSCA, 15 U.S.C. 2604, and is to be submitted 90 days before manufacture or import begins. The confidentiality of collected information will be maintained pursuant to the provisions of TSCA, 15 U.S.C. 2613.

The projected annual incremental cost to private parties associated with the rule is $1.2 million, with an associated burden of 41,000 hours. Annual incremental costs may be broken down into two components - initialization or start-up costs (rule familiarization), estimated to be $575,000, and costs for information disclosure and maintenance of records, estimated to be $600,000. Annual burden is estimated to be distributed among 218 responses, averaging 188 hours per response. The number of potential respondents is estimated to be about 400 (not every possible respondent is expected to file each year).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

D. Unfunded Mandates Reform Act and Executive Order 12875

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The costs associated with this action which are described in the Executive Order 12866 section above are well below $100 million for the private sector. This rule does not impose any duties upon States and local government. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency has determined that nothing in these notification procedures shall contribute to disproportionately high and adverse human health or environmental effects on such communities. This final rule describes informational requirements prior to manufacture, process, or import of new microorganisms based only on such microorganisms' genetic characteristics and, as such, shall not have the effect of excluding populations from participation in, denying populations the benefits of, or subjecting populations to discrimination because of their race, color, or national origin.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Parts 700, 720, 721, 723, and 725

Environmental protection, Administrative practice and procedure, Biotechnology, Chemicals, Hazardous substances, Imports, Labeling, Microorganisms, Occupational safety and health, Reporting and recordkeeping requirements, Significant new use rule.

Dated: March 26, 1997.

Carol M. Browner,

Administrator.

Therefore, 40 CFR Chapter I is amended as follows:

PART 700—[AMENDED]

1. In part 700:

a. The authority citation for part 700 continues to read as follows:

Authority: 15 U.S.C. 2625.

b. In § 700.43, by revising the introductory text and the definition of ''Section 5 notice'' and adding two definitions to read as follows:

§ 700.43 Definitions.

Definitions in section 3 of the Act (15 U.S.C. 2602), as well as definitions contained in §§ 704.3, 720.3, and 725.3 of this chapter, apply to this subpart unless otherwise specified in this section. In addition, the following definitions apply:

Consolidated microbial commercial activity notice or consolidated MCAN means any MCAN submitted to EPA that covers more than one microorganism (each being assigned a separate MCAN number by EPA) as a result of a prenotice agreement with EPA.

* * * * *

Microbial commercial activity notice or *MCAN* means any notice for microorganisms submitted to EPA pursuant to section 5(a)(1) of the Act in accordance with subpart D of part 725 of this chapter.

* * * * *

Section 5 notice means any PMN, consolidated PMN, intermediate PMN, significant new use notice, exemption notice, exemption application, any MCAN or consolidated MCAN submitted under section 5 of the Act.

* * * * *

c. In § 700.45 by adding paragraphs (b)(2)(vi), (e)(4)(iv), (e)(5)(iv), (f)(4), and revising paragraphs (c) and (f)(3) to read as follows:

§ 700.45 Fee payments.

* * * * *

(b) * * *

(2) * * *

(vi) *MCAN and consolidated MCAN*. Persons shall remit a fee of $2,500 for each MCAN or consolidated MCAN submitted.

(c) *No fee required*. Persons are exempt from remitting any fee for submissions under §§ 720.38, 723.50, and subparts E, F, and G of part 725 of this chapter.

* * * * *

(e) * * *

(4) * * *

(iv) Each person who remits the fee identified in paragraph (b)(1) of this section for a MCAN for a microorganism shall include the words, ''The company identified in this notice is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(d),'' in the certification required in § 725.25(b) of this chapter.

(5) * * *

(iv) Each person who remits a fee identified in paragraph (b)(2) of this section for a MCAN for a microorganism shall include the words, ''The company identified in this notice has remitted the fee specified in 40 CFR 700.45(b),'' in the certification required in § 725.25(b) of this chapter.

(f) * * *

(3) The notice is incomplete under either § 720.65(c) or 725.33, of this chapter.

(4) That as of the date of submission of the notice: the microorganism that is the subject of a MCAN is not a new microorganism; nor is the use involving the microorganism a significant new use.

d. By revising § 700.49 to read as follows:

§ 700.49 Failure to remit fees.

EPA will not consider a section 5 notice to be complete unless the appropriate certification under § 700.45(e) is included and until the appropriate remittance under § 700.45(b) has been sent to EPA as provided in § 700.45(e) and received by EPA. EPA will notify the submitter that the section 5 notice is incomplete in accordance with §§ 720.65(c) and 725.33 of this chapter.

PART 720—[AMENDED]

2. In part 720:

a. The authority citation for part 720 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

b. In § 720.1, by revising the first sentence and adding a sentence to read as follows:

§ 720.1 Scope.

This part establishes procedures for the reporting of new chemical substances by manufacturers and importers under section 5 of the Toxic Substances Control Act, 15 U.S.C. 2604. This part applies to microorganisms only to the extent provided by part 725 of this chapter. * * *

PART 721—[AMENDED]

3. In part 721:

a. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

b. In § 721.1(a), by revising the first sentence to read as follows:

§ 721.1 Scope and applicability.

This part identifies uses of chemical substances, except for microorganisms regulated under part 725 of this chapter, which EPA has determined are significant new uses under the authority of section 5(a)(2) of the Toxic Substances Control Act. * * *

PART 723—[AMENDED]

4. In part 723:

a. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

b. In § 723.50, by revising the section heading and adding paragraph (a)(3) to read as follows:

§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

(a) * * *

(3) This section does not apply to microorganisms subject to part 725 of this chapter.

* * * * *

c. In § 723.175, by revising paragraph (a)(1) to read as follows:

§ 723.175 Chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles.

(a) *Purpose and scope*. (1) This section grants an exemption from the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture and processing of new chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles. This section does not apply to microorganisms subject to part 725 of this chapter.

* * * * *

d. In § 723.250, by revising paragraph (a)(1) to read as follows:

§ 723.250 Polymers.

(a) *Purpose and scope*. (1) This section grants an exemption from certain of the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of certain polymers. This section does not apply to microorganisms subject to part 725 of this chapter.

* * * * *

5. Part 725 is added to read as follows:

PART 725—REPORTING REQUIREMENTS AND REVIEW PROCESSES FOR MICROORGANISMS

Subpart A—General Provisions and Applicability

Sec.

725.1 Scope and purpose.
725.3 Definitions.
725.8 Coverage of this part.
725.12 Identification of microorganisms for Inventory and other listing purposes.
725.15 Determining applicability when microorganism identity or use is confidential or uncertain.
725.17 Consultation with EPA.

Subpart B—Administrative Procedures

725.20 Scope and purpose.
725.25 General administrative requirements.
725.27 Submissions.
725.28 Notice that submission is not required.
725.29 EPA acknowledgement of receipt of submission.
725.32 Errors in the submission.
725.33 Incomplete submissions.
725.36 New information.
725.40 Notice in the **Federal Register**.
725.50 EPA review.
725.54 Suspension of the review period.
725.56 Extension of the review period.
725.60 Withdrawal of submission by the submitter.
725.65 Recordkeeping.
725.67 Applications to exempt new microorganisms from this part.
725.70 Compliance.
725.75 Inspections.

Subpart C—Confidentiality and Public Access to Information

725.80 General provisions for confidentiality claims.
725.85 Microorganism identity.
725.88 Uses of a microorganism.
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Authority: 15 U.S.C. 2604, 2607, 2613, and 2625.

Subpart A—General Provisions and Applicability

§ 725.1 Scope and purpose.

(a) This part establishes all reporting requirements under section 5 of TSCA for manufacturers, importers, and processors of microorganisms subject to TSCA jurisdiction for commercial purposes, including research and development for commercial purposes. New microorganisms for which manufacturers and importers are required to report under section 5(a)(1)(A) of TSCA are those that are intergeneric. In addition, under section 5(a)(1)(B) of TSCA, manufacturers, importers, and processors may be required to report for any microorganism that EPA determines by rule is being manufactured, imported, or processed for a significant new use.

(b) Any manufacturer, importer, or processor required to report under section 5 of TSCA (see § 725.100 for new microorganisms and § 725.900 for significant new uses) must file a Microbial Commercial Activity Notice (MCAN) with EPA, unless the activity is eligible for a specific exemption as described in this part. The general procedures for filing MCANs are described in subpart D of this part. The exemptions from the requirement to file a MCAN are for certain kinds of contained activities (see §§ 725.424 and 725.428), test marketing activities (see § 725.300), and research and development activities described in paragraph (c) of this section.

(c) Any manufacturer, importer, or processor required to file a MCAN for research and development (R&D) activities may instead file a TSCA Experimental Release Application (TERA) for a specific test (see § 725.250). A TERA is not required for certain R&D activities; however a TERA exemption does not extend beyond the research and development stage, to general commercial use of the microorganism, for which compliance with MCAN requirements is required. The TERA exemptions are for R&D activities subject to other Federal agencies or programs (see § 725.232), certain kinds of contained R&D activities (see § 725.234), and R&D activities using certain listed microorganisms (see § 725.238).

(d) New microorganisms will be added to the Inventory established under section 8 of TSCA once a MCAN has been received, the MCAN review period has expired, and EPA receives a Notice of Commencement (NOC) indicating that manufacture or importation has actually begun. New microorganisms approved for use under a TERA will not be added to the Inventory until a MCAN has been received, the MCAN review period has expired, and EPA has received an NOC.

§ 725.3 Definitions.

Definitions in section 3 of the Act (15 U.S.C. 2602), as well as definitions contained in §§ 704.3, 720.3, and 721.3 of this chapter, apply to this part unless otherwise specified in this section. In addition, the following definitions apply to this part:

Consolidated microbial commercial activity notice or *consolidated MCAN* means any MCAN submitted to EPA that covers more than one microorganism (each being assigned a separate MCAN number by EPA) as a result of a prenotice agreement with EPA.

Containment and/or inactivation controls means any combination of engineering, mechanical, procedural, or biological controls designed and operated to restrict environmental release of viable microorganisms from a structure.

Director means the Director of the EPA Office of Pollution Prevention and Toxics.

Exemption request means any application submitted to EPA under subparts E, F, or G of this part.

General commercial use means use for commercial purposes other than research and development.

Genome means the sum total of chromosomal and extrachromosomal genetic material of an isolate and any descendants derived under pure culture conditions from that isolate.

Health and safety study of a microorganism or *health and safety study* means any study of any effect of a microorganism or microbial mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a microorganism or microbial mixture, toxicological, clinical, and ecological, or other studies of a microorganism or microbial mixture, and any test performed under the Act. Microorganism identity is always part of a health and safety study of a microorganism.

(1) It is intended that the term ''health and safety study of a microorganism'' be interpreted broadly. Not only is information which arises as a result of a formal, disciplined study included, but other information relating to the effects of a microorganism or microbial mixture on health or the environment is also included. Any data that bear on the effects of a microorganism on health or the environment would be included.

(2) Examples include:

(i) Tests for ecological or other environmental effects on invertebrates, fish, or other animals, and plants, including: Acute toxicity tests, chronic toxicity tests, critical life stage tests, behavioral tests, algal growth tests, seed germination tests, plant growth or damage tests, microbial function tests, bioconcentration or bioaccumulation tests, and model ecosystem (microcosm) studies.

(ii) Long- and short-term tests of mutagenicity, carcinogenicity, or teratogenicity; dermatoxicity; cumulative, additive, and synergistic effects; and acute, subchronic, and chronic effects.

(iii) Assessments of human and environmental exposure, including workplace exposure, and impacts of a particular microorganism or microbial mixture on the environment, including surveys, tests, and studies of: Survival and transport in air, water, and soil; ability to exchange genetic material with other microorganisms, ability to colonize human or animal guts, and ability to colonize plants.

(iv) Monitoring data, when they have been aggregated and analyzed to measure the exposure of humans or the environment to a microorganism.

(v) Any assessments of risk to health and the environment resulting from the manufacture, processing, distribution in commerce, use, or disposal of the microorganism.

Inactivation means that living microorganisms are rendered nonviable.

Institutional Biosafety Committee means the committees described in the NIH Guidelines in section IV.B.2.

Intergeneric microorganism means a microorganism that is formed by the deliberate combination of genetic material originally isolated from organisms of different taxonomic genera.

(1) The term ''intergeneric microorganism'' includes a microorganism which contains a mobile genetic element which was first identified in a microorganism in a genus different from the recipient microorganism.

(2) The term ''intergeneric microorganism'' does not include a microorganism which contains introduced genetic material consisting of only well-characterized, non-coding regulatory regions from another genus.

Introduced genetic material means genetic material that is added to, and remains as a component of, the genome of the recipient.

Manufacture, import, or process for commercial purposes means:

(1) To import, produce, manufacture, or process with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, importer, or processor, and includes, among other things, ''manufacture'' or ''processing'' of any amount of a microorganism or microbial mixture:

(i) For commercial distribution, including for test marketing.

(ii) For use by the manufacturer, including use for product research and development or as an intermediate.

(2) The term also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another microorganism or microbial mixture, including byproducts that are separated from that other microorganism or microbial mixture and impurities that remain in that microorganism or microbial mixture. Byproducts and impurities without separate commercial value are nonetheless produced for the purpose of obtaining a commercial advantage, since they are part of the manufacture or processing of a microorganism for commercial purposes.

Microbial commercial activity notice or *MCAN* means a notice for microorganisms submitted to EPA pursuant to section 5(a)(1) of the Act in accordance with subpart D of this part.

Microbial mixture means any combination of microorganisms or microorganisms and other chemical substances, if the combination does not occur in nature and is not an article.

Microorganism means an organism classified, using the 5-kingdom classification system of Whittacker, in the kingdoms Monera (or Procaryotae), Protista, Fungi, and the Chlorophyta and the Rhodophyta of the Plantae, and a virus or virus-like particle.

Mobile genetic element or *MGE* means an element of genetic material that has the ability to move genetic material within and between organisms. ''Mobile genetic elements'' include all plasmids, viruses, transposons, insertion sequences, and other classes of elements with these general properties.

New microorganism means a microorganism not included on the Inventory.

NIH Guidelines means the National Institutes of Health (NIH) ''Guidelines for Research Involving Recombinant DNA Molecules'' (July 5, 1994).

Non-coding regulatory region means a segment of introduced genetic material for which:

(1) The regulatory region and any inserted flanking nucleotides do not code for protein, peptide, or functional ribonucleic acid molecules.

(2) The regulatory region solely controls the activity of other regions that code for protein or peptide molecules or act as recognition sites for the initiation of nucleic acid or protein synthesis.

Small quantities solely for research and development (or ''small quantities solely for purposes of scientific experimentation or analysis or research on, or analysis of, such substance or another substance, including such research or analysis for development of a product'') means quantities of a microorganism manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that meet the requirements of § 725.234.

Structure means a building or vessel which effectively surrounds and encloses the microorganism and includes features designed to restrict the microorganism from leaving.

Submission means any MCAN or exemption request submitted to EPA under this part.

Technically qualified individual means a person or persons:

(1) Who, because of education, training, or experience, or a combination of these factors, is capable of understanding the health and environmental risks associated with the microorganism which is used under his or her supervision,

(2) Who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or microbiological research to minimize such risks, and

(3) Who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the microorganism as may be appropriate or required within the scope of conducting a research and development activity.

TSCA Experimental Release Application or *TERA* means an exemption request for a research and development activity, which is not eligible for a full exemption from reporting under § 725.232, 725.234, or 725.238, submitted to EPA in accordance with subpart E of this part.

Well-characterized for introduced genetic material means that the following have been determined:

(1) The function of all of the products expressed from the structural gene(s).

(2) The function of sequences that participate in the regulation of expression of the structural gene(s).

(3) The presence or absence of associated nucleotide sequences and their associated functions, where associated nucleotide sequences are those sequences needed to move genetic material including linkers, homopolymers, adaptors, transposons, insertion sequences, and restriction enzyme sites.

§ 725.8 Coverage of this part.

(a) *Microorganisms subject to this part.* Only microorganisms which are manufactured, imported, or processed for commercial purposes, as defined in § 725.3, are subject to the requirements of this part.

(b) *Microorganisms automatically included on the Inventory.* Microorganisms that are not intergeneric are automatically included on the Inventory.

(c) *Microorganisms not subject to this part.* The following microorganisms are not subject to this part, either because they are not subject to jurisdiction under the Act or are not subject to reporting under section 5 of the Act.

(1) Any microorganism which would be excluded from the definition of ''chemical substance'' in section 3 of the Act and § 720.3(e) of this chapter.

(2) Any microbial mixture as defined in § 725.3. This exclusion applies only to a microbial mixture as a whole and not to any microorganisms and other chemical substances which are part of the microbial mixture.

(3) Any microorganism that is manufactured and processed solely for export if the following conditions are met:

(i) The microorganism is labeled in accordance with section 12(a)(1)(B) of the Act, when the microorganism is distributed in commerce.

(ii) The manufacturer and processor can document at the commencement of manufacturing or processing that the person to whom the microorganism will be distributed intends to export it or process it solely for export as defined in § 721.3 of this chapter.

§ 725.12 Identification of microorganisms for Inventory and other listing purposes.

To identify and list microorganisms on the Inventory, both taxonomic designations and supplemental information will be used. The supplemental information required in paragraph (b) of this section will be used to specifically describe an individual microorganism on the Inventory. Submitters must provide the supplemental information required by paragraph (b) of this section to the extent necessary to enable a microorganism to be accurately and unambiguously identified on the Inventory.

(a) *Taxonomic designation.* The taxonomic designation of a microorganism must be provided for the donor organism and the recipient microorganism to the level of strain, as appropriate. These designations must be substantiated by a letter from a culture collection, literature references, or the results of tests conducted for the purpose of taxonomic classification. Upon EPA's request to the submitter, data supporting the taxonomic designation must be provided to EPA. The genetic history of the recipient microorganism should be documented back to the isolate from which it was derived.

(b) *Supplemental information.* The supplemental information described in paragraphs (b)(1) and (b)(2) of this section is required to the extent that it enables a microorganism to be accurately and unambiguously identified.

(1) *Phenotypic information.* Phenotypic information means pertinent traits that result from the interaction of a microorganism's genotype and the environment in which it is intended to be used and may include intentionally added biochemical and physiological traits.

(2) *Genotypic information.* Genotypic information means the pertinent and distinguishing genotypic characteristics of a microorganism, such as the identity of the introduced genetic material and the methods used to construct the reported microorganism. This also may include information on the vector construct, the cellular location, and the number of copies of the introduced genetic material.

§ 725.15 Determining applicability when microorganism identity or use is confidential or uncertain.

(a) *Consulting EPA.* Persons intending to conduct activities involving microorganisms may determine their obligations under this part by consulting the Inventory or the microorganisms and uses specified in § 725.239 or in subpart M of this part. This section establishes procedures for EPA to assist persons in determining whether the microorganism or the use is listed on the Inventory, in § 725.239 or in subpart M of this part.

(1) Confidential identity or use. In some cases it may not be possible to directly determine if a specific microorganism is listed, because portions of that entry may contain generic information to protect confidential business information (CBI). If any portion of the microorganism's identity or use has been claimed as CBI, that portion does not appear on the public version of the Inventory, in § 725.239 or in subpart M of this part. Instead, it is contained in a confidential version held in EPA's Confidential Business Information Center (CBIC). The public versions contain generic information which masks the confidential business information. A person who intends to conduct an activity involving a microorganism or use whose entry is described with generic information will need to inquire of EPA whether the unreported microorganism or use is on the confidential version.

(2) Uncertain microorganism identity. The current state of scientific knowledge leads to some imprecision in describing a microorganism. As the state of knowledge increases, EPA will be developing policies to determine whether one microorganism is equivalent to another. Persons intending to conduct activities involving microorganisms may inquire of EPA whether the microorganisms they intend to manufacture, import, or process are equivalent to specific microorganisms described on the Inventory, in § 725.239, or in subpart M of this part.

(b) *Requirement of bona fide intent.* (1) EPA will answer the inquiries described in paragraph (a) of this section only if the Agency determines that the person has a *bona fide* intent to conduct the activity for which reporting is required or for which any exemption may apply.

(2) To establish a *bona fide* intent to manufacture, import, or process a microorganism, the person who intends to manufacture, import, or process the microorganism must submit the following information in writing to the Office of Pollution Prevention and Toxics, Document Control Officer, 7407, 401 M St., SW., Washington, DC 20460, ATTN: BIOTECH *bona fide* submission.

(i) Taxonomic designations and supplemental information required by § 725.12.

(ii) A signed statement certifying that the submitter intends to manufacture, import, or process the microorganism for commercial purposes.

(iii) A description of research and development activities conducted with the microorganism to date, demonstration of the submitter's ability to produce or obtain the microorganism from a foreign manufacturer, and the purpose for which the person will

manufacture, import, or process the microorganism.

(iv) An indication of whether a related microorganism was previously reviewed by EPA to the extent known by the submitter.

(v) A specific description of the major intended application or use of the microorganism.

(c) If an importer or processor cannot provide all the information required by paragraph (b) of this section, because it is claimed as confidential business information by its foreign manufacturer or supplier, the foreign manufacturer or supplier may supply the information directly to EPA.

(d) EPA will review the information submitted by the manufacturer, importer, or processor under this paragraph to determine whether that person has shown a *bona fide* intent to manufacture, import, or process the microorganism. If necessary, EPA will compare this information to the information requested for the confidential microorganism under § 725.85(b)(3)(iii).

(e) In order for EPA to make a conclusive determination of the microorganism's status, the proposed manufacturer, importer, or processor must show a *bona fide* intent to manufacture, import, or process the microorganism and must provide sufficient information to establish identity unambiguously. After sufficient information has been provided, EPA will inform the manufacturer, importer, or processor whether the microorganism is subject to this part and if so, which sections of this part apply.

(f) If the microorganism is found on the confidential version of the Inventory, in § 725.239 or in subpart M of this part, EPA will notify the person(s) who originally reported the microorganism that another person (whose identity will remain confidential, if so requested) has demonstrated a *bona fide* intent to manufacture, import, or process the microorganism and therefore was told that the microorganism is on the Inventory, in § 725.239, or in subpart M of this part.

(g) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a particular microorganism that the microorganism is on the Inventory, in § 725.239, or in subpart M of this part will not be considered a public disclosure of confidential business information under section 14 of the Act.

(h) EPA will answer an inquiry on whether a particular microorganism is subject to this part within 30 days after receipt of a complete submission under paragraph (b) of this section.

§ 725.17 Consultation with EPA.

Persons may consult with EPA, either in writing or by telephone, about their obligations under this part. Written consultation is preferred. Written inquiries should be sent to the following address: Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Biotechnology Notice Consultation. Persons wishing to consult with EPA by telephone should call (202) 554–1404; hearing impaired TDD (202) 554–0551 or e-mail: TSCA-Hotline@epamail.epa.gov.

Subpart B—Administrative Procedures

§ 725.20 Scope and purpose.

This subpart describes general administrative procedures applicable to all persons who submit MCANs and exemption requests to EPA under section 5 of the Act for microorganisms.

§ 725.25 General administrative requirements.

(a) *General*. (1) Each person who is subject to the notification provisions of this part must complete, sign, and submit a MCAN or exemption request containing the information as required for the appropriate submission under this part. Except as otherwise provided, each submission must include all referenced attachments. All information in the submission (unless certain attachments appear in the open scientific literature) must be in English. All information submitted must be true and correct.

(2) In addition to specific information required, the submitter should submit all information known to or reasonably ascertainable by the submitter that would permit EPA to make a reasoned evaluation of the human health and environmental effects of the microorganism and any microbial mixture or article that may contain the microorganism.

(b) *Certification*. Persons submitting MCANs and exemption requests to EPA under this part, and material related to their reporting obligations under this part, must attach the following statement to any information submitted to EPA. This statement must be signed and dated by an authorized official of the submitter:

> I certify that to the best of my knowledge and belief: The company named in this submission intends to manufacture, import, or process for a commercial purpose, other than in small quantities solely for research and development, the microorganism identified in this submission. All information provided in this submission is complete and truthful as of the date of submission. I am including with this submission all test data in my possession or control and a description of all other data known to or reasonably ascertainable by me as required by 40 CFR 725.160 or 725.260.

(c) *Where to submit information under this part*. Persons submitting MCANs and exemption requests to EPA under this part, and material related to their reporting obligations under this part, must send them to: TSCA Document Processing Center (7407), Rm. L–100, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(d) *General requirements for submission of data*. (1) Submissions under this part must include the information described in § 725.155, 725.255, 725.355, or 725.455, as appropriate, to the extent such information is known to or reasonably ascertainable by the submitter.

(2) In accordance with § 725.160 or 725.260, as appropriate, the submission must also include any test data in the submitter's possession or control and descriptions of other data which are known to or reasonably ascertainable by the submitter and which concern the health and environmental effects of the microorganism.

(e) *Agency or joint submissions*. (1) A manufacturer or importer may designate an agent to submit the MCAN or exemption request. Both the manufacturer or importer and the agent must sign the certification required in paragraph (b) of this section.

(2) A manufacturer or importer may authorize another person (e.g., a foreign manufacturer or supplier, or a toll manufacturer) to report some of the information required in the MCAN or exemption request to EPA on its behalf. If separate portions of a joint submission are not submitted together, the submitter must indicate which information will be supplied by another person and identify that person. The manufacturer or importer and any other person supplying the information must sign the certification required by paragraph (b) of this section.

(3) If EPA receives a submission which does not include the information required, which the submitter indicates that it has authorized another person to provide, the review period will not begin until EPA receives all of the required information.

(f) *Microorganisms subject to a section 4 test rule*. (1) Except as provided in paragraph (f)(3) of this section, if a

person intends to manufacture or import a new microorganism which is subject to the notification requirements of this part, and the microorganism is subject to a test rule promulgated under section 4 of the Act before the notice is submitted, section 5(b)(1) of the Act requires the person to submit the test data required by the testing rule with the notice. The person must submit the data in the form and manner specified in the test rule and in accordance with § 725.160. If the person does not submit the test data, the submission is incomplete and EPA will follow the procedures in § 725.33.

(2) If EPA has granted the submitter an exemption under section 4(c) of the Act from the requirement to conduct tests and submit data, the person may not file a MCAN or TERA until EPA receives the test data.

(3) If EPA has granted the submitter an exemption under section 4(c) of the Act and if another person previously has submitted the test data to EPA, the exempted person may either submit the test data or provide the following information as part of the notice:

(i) The name, title, and address of the person who submitted the test data to EPA.

(ii) The date the test data were submitted to EPA.

(iii) A citation for the test rule.

(iv) A description of the exemption and a reference identifying it.

(g) *Microorganisms subject to a section 5(b)(4) rule*. (1) If a person:

(i) Intends to manufacture or import a microorganism which is subject to the notification requirements of this part and which is subject to a rule issued under section 5(b)(4) of the Act; and

(ii) Is not required by a rule issued under section 4 of the Act to submit test data for the microorganism before the filing of a submission, the person must submit to EPA data described in paragraph (g)(2) of this section at the time the submission is filed.

(2) Data submitted under paragraph (g)(1) of this section must be data which the person submitting the notice believes show that the manufacture, processing, distribution in commerce, use, and disposal of the microorganism, or any combination of such activities, will not present an unreasonable risk of injury to health or the environment.

(h) *Data that need not be submitted*. Specific data requirements are listed in subparts D, E, F, G, and L of this part. The following is a list of data that need not be submitted under this part:

(1) Data previously submitted to EPA. (i) A person need not submit any data previously submitted to EPA with no claims of confidentiality if the new submission includes: the office or person to whom the data were submitted; the date of submission; and, if appropriate, a standard literature citation as specified in § 725.160(a)(3)(ii).

(ii) For data previously submitted to EPA with a claim of confidentiality, the person must resubmit the data with the new submission and any claim of confidentiality, under § 725.80.

(2) Efficacy data. This part does not require submission of any data related solely to product efficacy. However, including efficacy data will improve EPA's ability to assess the benefits of the use of the microorganism. This does not exempt a person from submitting any of the data specified in § 725.160 or 725.260.

(3) Non-U.S. exposure data. This part does not require submission of any data which relates only to exposure of humans or the environment outside the United States. This does not exclude nonexposure data such as data on health effects (including epidemiological studies), ecological effects, physical and chemical properties, or environmental fate characteristics.

§ 725.27 Submissions.

Each person who is required to submit information under this part must submit the information in the form and manner set forth in the appropriate subpart.

(a) Requirements specific to MCANs are described in §§ 725.150 through 725.160.

(b) Requirements specific to TERAs are described in §§ 725.250 through 725.260.

(c) Requirements specific to test marketing exemptions (TMEs) are described in §§ 725.350 and 725.355.

(d) Requirements specific to Tier I and Tier II exemptions for certain general commercial uses are described in §§ 725.424 through 725.470.

(e) Additional requirements specific to significant new uses for microorganisms are described at § 725.950.

§ 725.28 Notice that submission is not required.

When EPA receives a MCAN or exemption request, EPA will review it to determine whether the microorganism is subject to the requirements of this part. If EPA determines that the microorganism is not subject to these requirements, EPA will notify the submitter that section 5 of the Act does not prevent the manufacture, import, or processing of the microorganism and that the submission is not needed.

§ 725.29 EPA acknowledgement of receipt of submission.

(a) EPA will acknowledge receipt of each submission by sending the submitter a letter that identifies the number assigned to each MCAN or exemption request and the date on which the review period begins. The review period will begin on the date the MCAN or exemption request is received by the Office of Pollution Prevention and Toxics Document Control Officer.

(b) The acknowledgement does not constitute a finding by EPA that the submission is in compliance with this part.

§ 725.32 Errors in the submission.

(a) Within 30 days of receipt of the submission, EPA may request that the submitter remedy errors in the submission. The following are examples of such errors:

(1) Failure to date the submission.

(2) Typographical errors that cause data to be misleading or answers to any questions to be unclear.

(3) Contradictory information.

(4) Ambiguous statements or information.

(b) In the request to correct the submission, EPA will explain the action which the submitter must take to correct the submission.

(c) If the submitter fails to correct the submission within 15 days of receipt of the request, EPA may extend the review period.

§ 725.33 Incomplete submissions.

(a) A submission under this part is not complete, and the review period does not begin, if:

(1) The wrong person files the submission.

(2) The submitter does not attach and sign the certification statement as required by § 725.25(b).

(3) Some or all of the information in the submission or any attachments are not in English, except for published scientific literature.

(4) The submitter does not provide information that is required by sections 5(d)(1)(B) and (C) of the Act and § 725.160 or 725.260, as appropriate.

(5) The submitter does not provide information required by § 725.25, 725.155, 725.255, 725.355, or 725.455, as appropriate, or indicate that it is not known to or reasonably ascertainable by the submitter.

(6) The submitter has asserted confidentiality claims and has failed to:

(i) Submit a second copy of the submission with all confidential information deleted for the public file, as required by § 725.80(b)(2).

(ii) Comply with the substantiation requirements as described in § 725.94.

(7) The submitter does not include any information required by section 5(b)(1) of the Act and pursuant to a rule promulgated under section 4 of the Act, as required by § 725.25(f).

(8) The submitter does not submit data which the submitter believes show that the microorganism will not present an unreasonable risk of injury to health or the environment, if EPA has listed the microorganism under section 5(b)(4) of the Act, as required in § 725.25(g).

(9) For MCANs, the submitter does not remit the fees required by § 700.45(b)(1) or (b)(2)(vi) of this chapter.

(b)(1) If EPA receives an incomplete submission under this part, the Director, or a designee, will notify the submitter within 30 days of receipt that the submission is incomplete and that the review period will not begin until EPA receives a complete submission.

(2) If EPA obtains additional information during the review period for any submission that indicates the original submission was incomplete, the Director, or a designee, may declare the submission incomplete within 30 days after EPA obtains the additional information and so notify the submitter.

(c) The notification that a submission is incomplete under paragraph (b) of this section will include:

(1) A statement of the basis of EPA's determination that the submission is incomplete.

(2) The requirements for correcting the incomplete submission.

(3) Information on procedures under paragraph (d) of this section for filing objections to the determination or requesting modification of the requirements for completing the submission.

(d) Within 10 days after receipt of notification by EPA that a submission is incomplete, the submitter may file written objections requesting that EPA accept the submission as complete or modify the requirements necessary to complete the submission.

(e)(1) EPA will consider the objections filed by the submitter. The Director, or a designee, will determine whether the submission was complete or incomplete, or whether to modify the requirements for completing the submission. EPA will notify the submitter in writing of EPA's response within 10 days of receiving the objections.

(2) If the Director, or a designee, determines, in response to the objection, that the submission was complete, the review period will be deemed suspended on the date EPA declared the submission incomplete, and will resume on the date that the submission is declared complete. The submitter need not correct the submission as EPA originally requested. If EPA can complete its review within the review period beginning on the date of the submission, the Director, or a designee, may inform the submitter that the running of the review period will resume on the date EPA originally declared it incomplete.

(3) If the Director, or a designee, modifies the requirements for completing the submission or concurs with EPA's original determination, the review period will begin when EPA receives a complete submission.

(f) If EPA discovers at any time that a person submitted materially false or misleading statements in information submitted under this part, EPA may find that the submission was incomplete from the date it was submitted, and take any other appropriate action.

§ 725.36 New information.

(a) During the review period, if a submitter possesses, controls, or knows of new information that materially adds to, changes, or otherwise makes significantly more complete the information included in the MCAN or exemption request, the submitter must send that information to the address listed in § 725.25(c) within 10 days of receiving the new information, but no later than 5 days before the end of the review period.

(b) The new submission must clearly identify the submitter, the MCAN or exemption request to which the new information is related, and the number assigned to that submission by EPA, if known to the submitter.

(c) If the new information becomes available during the last 5 days of the review period, the submitter must immediately inform the EPA contact for that submission by telephone of the new information.

§ 725.40 Notice in the Federal Register.

(a) *Filing of* **Federal Register** notice. After EPA receives a MCAN or an exemption request under this part, EPA will issue a notice in the **Federal Register** including the information specified in paragraph (b) of this section.

(b) *Contents of notice*. (1) In the public interest, the specific microorganism identity listed in the submission will be published in the **Federal Register** unless the submitter has claimed the microorganism identity confidential. If the submitter claims confidentiality, a generic name will be published in accordance with § 725.85.

(2) The categories of use of the microorganism will be published as reported in the submission unless this information is claimed confidential. If confidentiality is claimed, the generic information which is submitted under § 725.88 will be published.

(3) A list of information submitted in accordance with § 725.160(a), 725.255, 725.260, 725.355, or 725.455, as appropriate, will be published.

(4) The submitter's identity will be published, unless the submitter has claimed it confidential.

(c) *Publication of exemption decisions*. Following the expiration of the appropriate review period for the exemption request, EPA will issue a notice in the **Federal Register** indicating whether the request has been approved or denied and the reasons for the decision.

§ 725.50 EPA review.

(a) *MCANs*. The review period specified in section 5(a) of the Act for MCANs runs for 90 days from the date the Document Control Officer receives a complete submission, or the date EPA determines the submission is complete under § 725.33, unless the Agency extends the review period under section 5(c) of the Act and § 725.56.

(b) *Exemption requests*. The review period starts on the date the Document Control Officer receives a complete exemption request, or the date EPA determines the request is complete under § 725.33, unless the Agency extends the review period under § 725.56. The review periods for exemption requests run as follows:

(1) *TERAs*. The review period for TERAs is 60 days.

(2) *TMEs*. The review period for TMEs is 45 days.

(3) *Tier II exemption requests*. The review period for Tier II exemption requests is 45 days.

§ 725.54 Suspension of the review period.

(a) A submitter may voluntarily suspend the running of the review period if the Director, or a designee, agrees. If the Director does not agree, the review period will continue to run, and EPA will notify the submitter. A submitter may request a suspension at any time during the review period. The suspension must be for a specified period of time.

(b) A request for suspension may be made in writing to the address listed in § 725.25(c). The suspension also may be made orally, including by telephone, to the submitter's EPA contact for that submission. EPA will send the submitter a written confirmation that the suspension has been granted.

(1) An oral request may be granted for no longer than 15 days. To obtain a

longer suspension, the Document Control Officer for the Office of Pollution Prevention and Toxics must receive written confirmation of the oral request. The review period is suspended as of the date of the oral request.

(2) If the submitter has not made a previous oral request, the running of the review period is suspended as of the date of receipt of the written request by the Document Control Officer for the Office of Pollution Prevention and Toxics.

§ 725.56 Extension of the review period.

(a) At any time during the review period, EPA may unilaterally determine that good cause exists to extend the review period specified for MCANs, or the exemption requests.

(b) If EPA makes such a determination, EPA:

(1) Will notify the submitter that EPA is extending the review period for a specified length of time and state the reasons for the extension.

(2) For MCANs, EPA may issue a notice for publication in the **Federal Register** which states that EPA is extending the review period and gives the reasons for the extension.

(c) The total period of the extension may be for a period of up to the same length of time as specified for each type of submission in § 725.50. If the initial extension is for less than the total time allowed, EPA may make additional extensions. However, the sum of the extensions may not exceed the total allowed.

(d) The following are examples of situations in which EPA may find that good cause exists for extending the review period:

(1) EPA has reviewed the submission and is seeking additional information.

(2) EPA has received significant additional information during the review period.

(3) The submitter has failed to correct a submission after receiving EPA's request under § 725.32.

(4) EPA has reviewed the submission and determined that there is a significant possibility that the microorganism will be regulated under section 5(e) or section 5(f) of the Act, but EPA is unable to initiate regulatory action within the initial review period.

§ 725.60 Withdrawal of submission by the submitter.

(a) A submitter may withdraw a submission during the review period. A statement of withdrawal must be made in writing to the address listed in § 725.25(c). The withdrawal is effective upon receipt of the statement by the Document Control Officer.

(b) If a manufacturer, importer, or processor who withdrew a submission later resubmits a submission for the same microorganism, a new review period begins.

§ 725.65 Recordkeeping.

(a) *General provisions.* (1) Any person who submits a notice under this part must retain documentation of information in the submission, including:

(i) Any data in the submitter's possession or control; and

(ii) Records of production volume for the first 3 years of manufacture, import, or processing.

(2) Any person who submits a notice under this part must retain documentation of the date of commencement of testing, manufacture, import, or processing.

(3) Any person who is exempt from some or all of the reporting requirements of this part must retain documentation that supports the exemption.

(4) All information required by this section must be retained for 3 years from the date of commencement of each activity for which records are required under this part.

(b) *Specific requirements.* In addition to the requirements of paragraph (a) of this section, specific recordkeeping requirements included in certain subparts must also be followed.

(1) Additional recordkeeping requirements for activities conducted inside a structure are set forth in § 725.235(h).

(2) Additional recordkeeping requirements for TERAs are set forth in § 725.250(f).

(3) Additional recordkeeping requirements for TMEs are set forth in § 725.350(c).

(4) Additional recordkeeping requirements for Tier I exemptions under subpart G of this part are set forth in § 725.424(a)(5).

(5) Additional recordkeeping requirements for Tier II exemptions under subpart G of this part are set forth in § 725.450(d).

(6) Additional recordkeeping requirements for significant new uses of microorganisms reported under subpart L of this part are set forth in § 725.850. Recordkeeping requirements may also be included when a microorganism and significant new use are added to subpart M of this part.

§ 725.67 Applications to exempt new microorganisms from this part.

(a) *Submission.* (1) Any manufacturer or importer of a new microorganism may request, under section 5(h)(4) of the Act, an exemption, in whole or in part, from this part by sending a Letter of Application to the Chief, New Chemicals Branch, Chemical Control Division, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(2) *General provisions.* The Letter of Application should provide information to show that any activities affected by the requested exemption will not present an unreasonable risk of injury to health or the environment. This information should include data described in the following paragraphs.

(i) The effects of the new microorganism on health and the environment.

(ii) The magnitude of exposure of human beings and the environment to the new microorganism.

(iii) The benefits of the new microorganism for various uses and the availability of substitutes for such uses.

(iv) The reasonably ascertainable economic consequences of granting or denying the exemption, including effects on the national economy, small business, and technological innovation.

(3) *Specific requirements.* In addition to the requirements of paragraph (a)(2) of this section, the specific information requirements of the relevant subpart under which the exemption is sought should be met.

(i) *Exemption from MCAN reporting under subpart D.* Information requirements are set forth in §§ 725.155 and 725.160.

(ii) *Exemption from TERA reporting under subpart E.* Information requirements are set forth in §§ 725.255 and 725.260.

(iii) *Listing a recipient microorganism as eligible for exemption under subpart G.* Information regarding the following criteria should be addressed in an application to list a recipient microorganism under § 725.420:

(A) Identification and classification of the microorganism using available genotypic and phenotypic information;

(B) Information to evaluate the relationship of the microorganism to any other closely related microorganisms which have a potential for adverse effects on health or the environment;

(C) A history of safe commercial use for the microorganism;

(D) Commercial uses indicating that the microorganism products might be subject to TSCA;

(E) Studies which indicate the potential for the microorganism to cause adverse effects to health or the environment; and

(F) Studies which indicate the survival characteristics of the microorganism in the environment.

(b) *Processing of the Letter of Application by EPA*—(1) *Grant of the Application*. If, after consideration of the Letter of Application and any other relevant information available to EPA, the Assistant Administrator for Prevention, Pesticides and Toxic Substances makes a preliminary determination that the new microorganism will not present an unreasonable risk of injury to health or the environment, the Assistant Administrator will propose a rule to grant the exemption using the applicable procedures in part 750 of this chapter.

(2) *Denial of the application*. If the Assistant Administrator decides that the preliminary determination described in paragraph (b)(1) of this section cannot be made, the application will be denied by sending the applicant a written statement with the Assistant Administrator's reasons for denial.

(c) *Processing of the exemption*—(1) *Unreasonable risk standard*. Granting a section 5(h)(4) exemption requires a determination that the activities will not present an unreasonable risk of injury to health or the environment.

(i) An unreasonable risk determination under the Act is an administrative judgment that requires balancing of the harm to health or the environment that a chemical substance may cause and the magnitude and severity of that harm, against the social and economic effects on society of EPA action to reduce that harm.

(ii) A determination of unreasonable risk under section 5(h)(4) of the Act will examine the reasonably ascertainable economic and social consequences of granting or denying the exemption after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

(2) *Grant of the exemption*. The exemption will be granted if the Assistant Administrator determines, after consideration of all relevant evidence presented in the rulemaking proceeding described in paragraph (b)(1) of this section, that the new microorganism will not present an unreasonable risk of injury to health or the environment.

(3) *Denial of the exemption*. The exemption will be denied if the Assistant Administrator determines, after consideration of all relevant evidence presented in the rulemaking proceeding described in paragraph (b)(1) of this section, that the determination described in paragraph (c)(2) of this section cannot be made. A final decision terminating the rulemaking proceeding will be published in the **Federal Register**.

§ 725.70 Compliance.

(a) Failure to comply with any provision of this part is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) A person who manufactures or imports a microorganism before a MCAN is submitted and the MCAN review period expires is in violation of section 15 of the Act even if that person was not required to submit the MCAN under § 725.105.

(c) Using a microorganism which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 of the Act or this part is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(e) Failure or refusal to permit entry or inspection as required by section 11 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(f) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirements of any provision of this part may be subject to penalties calculated as if they never filed their submissions.

(g) EPA may seek to enjoin the manufacture or processing of a microorganism in violation of this part or act to seize any microorganism manufactured or processed in violation of this part or take other actions under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 2616).

§ 725.75 Inspections.

EPA will conduct inspections under section 11 of the Act to assure compliance with section 5 of the Act and this part, to verify that information required by EPA under this part is true and correct, and to audit data submitted to EPA under this part.

Subpart C—Confidentiality and Public Access to Information

§ 725.80 General provisions for confidentiality claims.

(a) A person may assert a claim of confidentiality for any information submitted to EPA under this part. However,

(1) Any person who asserts a claim of confidentiality for portions of the specific microorganism identity must provide the information as described in § 725.85.

(2) Any person who asserts a claim of confidentiality for a use of a microorganism must provide the information as described in § 725.88.

(3) Any person who asserts a claim of confidentiality for information contained in a health and safety study of a microorganism must provide the information described in § 725.92.

(b) Any claim of confidentiality must accompany the information when it is submitted to EPA.

(1) When a person submits any information under this part, including any attachments, for which claims of confidentiality are made, the claim(s) must be asserted by circling the specific information which is claimed and marking the page on which that information appears with an appropriate designation such as ''trade secret,'' ''TSCA CBI,'' or ''confidential business information.''

(2) If any information is claimed confidential, the person must submit two copies of the document including the claimed information.

(i) One copy of the document must be complete. In that copy, the submitter must mark the information which is claimed as confidential in the manner prescribed in paragraph (b)(1) of this section.

(ii) The second copy must be complete except that all information claimed as confidential in the first copy must be deleted. EPA will place the second copy in the public file.

(iii) If the submitter does not provide the second copy, the submission is incomplete and the review period does not begin to run until EPA receives the second copy, in accordance with § 725.33.

(iv) Any information contained within the copy submitted under paragraph (b)(2)(ii) of this section which has been in the public file for more than 30 days will be presumed to be in the public domain, notwithstanding any assertion of confidentiality made under this section.

(3) A person who submits information to EPA under this part must reassert a claim of confidentiality and substantiate the claim each time the information is submitted to EPA.

(c) Any person asserting a claim of confidentiality under this part must substantiate each claim in accordance with the requirements in § 725.94.

(d) EPA will disclose information that is subject to a claim of confidentiality asserted under this section only to the extent permitted by the Act, this subpart, and part 2 of this title.

(e) If a submitter does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public and place it in the public file without further notice to the submitter.

§ 725.85 Microorganism identity.

(a) *Claims applicable to the period prior to commencement of manufacture or import for general commercial use*—(1) *When to make a claim*. (i) A person who submits information to EPA under this part may assert a claim of confidentiality for portions of the specific microorganism identity at the time of submission of the information. This claim will apply only to the period prior to the commencement of manufacture or import for general commercial use.

(ii) A person who submits information to EPA under this part must reassert a claim of confidentiality and substantiate the claim each time the information is submitted to EPA. For example, if a person claims certain information confidential in a TERA submission and wishes the same information to remain confidential in a subsequent TERA or MCAN submission, the person must reassert and resubstantiate the claim in the subsequent submission.

(2) *Assertion of claim*. (i) A submitter may assert a claim of confidentiality only if the submitter believes that public disclosure prior to commencement of manufacture or import for general commercial use of the fact that anyone is initiating research and development activities pertaining to the specific microorganism or intends to manufacture or import the specific microorganism for general commercial use would reveal confidential business information. Claims must be substantiated in accordance with the requirements of § 725.94(a).

(ii) If the submission includes a health and safety study concerning the microorganism and if the claim for confidentiality with respect to the specific identity is denied in accordance with § 725.92(c), EPA will deny a claim asserted under paragraph (a) of this section.

(3) *Development of generic name*. Any person who asserts a claim of confidentiality for portions of the specific microorganism identity under this paragraph must provide one of the following items at the time the submission is filed:

(i) The generic name which was accepted by EPA in the prenotice consultation conducted under paragraph (a)(4) of this section.

(ii) One generic name that is only as generic as necessary to protect the confidential identity of the particular microorganism. The name should reveal the specific identity to the maximum extent possible. The generic name will be subject to EPA review and approval.

(4) *Determination by EPA*. (i) Any person who intends to assert a claim of confidentiality for the specific identity of a new microorganism may seek a determination by EPA of an appropriate generic name for the microorganism before filing a submission. For this purpose, the person should submit to EPA:

(A) The specific identity of the microorganism.

(B) A proposed generic name(s) which is only as generic as necessary to protect the confidential identity of the new microorganism. The name(s) should reveal the specific identity of the microorganism to the maximum extent possible.

(ii) Within 30 days, EPA will inform the submitter either that one of the proposed generic names is adequate or that none is adequate and further consultation is necessary.

(5) *Use of generic name*. If a submitter claims microorganism identity as confidential under paragraph (a) of this section, and if the submitter complies with paragraph (a)(2) of this section, EPA will issue for publication in the **Federal Register** notice described in § 725.40 the generic name proposed by the submitter or one agreed upon by EPA and the submitter.

(b) *Claims applicable to the period after commencement of manufacture or import for general commercial use*—(1) *Maintaining claim*. Any claim of confidentiality under paragraph (a) of this section is applicable only until the microorganism is manufactured or imported for general commercial use and becomes eligible for inclusion on the Inventory. To maintain the confidential status of the microorganism identity when the microorganism is added to the Inventory, a submitter must reassert the confidentiality claim and substantiate the claim in the notice of commencement of manufacture required under § 725.190.

(i) A submitter may not claim the microorganism identity confidential for the period after commencement of manufacture or import for general commercial use unless the submitter claimed the microorganism identity confidential under paragraph (a) of this section in the MCAN submitted for the microorganism.

(ii) A submitter may claim the microorganism identity confidential for the period after commencement of manufacture or import for general commercial use if the submitter did not claim the microorganism identity confidential under paragraph (a) of this section in any TERA submitted for the microorganism, but subsequently did claim microorganism identity confidential in the MCAN submitted for the microorganism.

(2) *Assertion of claim*. (i) A person who believes that public disclosure of the fact that anyone manufactures or imports the microorganism for general commercial use would reveal confidential business information may assert a claim of confidentiality under paragraph (b) of this section.

(ii) If the notice includes a health and safety study concerning the new microorganism, and if the claim for confidentiality with respect to the microorganism identity is denied in accordance with § 725.92(c), EPA will deny a claim asserted under paragraph (b) of this section.

(3) *Requirements for assertion*. Any person who asserts a confidentiality claim for microorganism identity must:

(i) Comply with the requirements of paragraph (a)(3) of this section regarding submission of a generic name.

(ii) Agree that EPA may disclose to a person with a *bona fide* intent to manufacture or import the microorganism the fact that the particular microorganism is included on the confidential Inventory for purposes of notification under section 5(a)(1)(A) of the Act.

(iii) Have available and agree to furnish to EPA upon request the taxonomic designations and supplemental information required by § 725.12.

(iv) Provide a detailed written substantiation of the claim, in accordance with the requirements of § 725.94(b).

(4) *Denial of claim*. If the submitter does not meet the requirements of paragraph (b) of this section, EPA will deny the claim of confidentiality.

(5) *Acceptance of claim*. (i) EPA will publish a generic name on the public Inventory if:

(A) The submitter asserts a claim of confidentiality in accordance with this paragraph.

(B) No claim for confidentiality of the microorganism identity as part of a health and safety study has been denied in accordance with part 2 of this title or § 725.92.

(ii) Publication of a generic name on the public Inventory does not create a category for purposes of the Inventory. Any person who has a *bona fide* intent to manufacture or import a microorganism which is described by a generic name on the public Inventory may submit an inquiry to EPA under

§ 725.15(b) to determine whether the particular microorganism is included on the confidential Inventory.

(iii) Upon receipt of a request described in § 725.15(b), EPA may require the submitter who originally asserted confidentiality for a microorganism to submit to EPA the information listed in paragraph (b)(3)(iii) of this section.

(iv) Failure to submit any of the information required under paragraph (b)(3)(iii) of this section within 10 calendar days of receipt of a request by EPA under paragraph (b) of this section will constitute a waiver of the original submitter's confidentiality claim. In this event, EPA may place the specific microorganism identity on the public Inventory without further notice to the original submitter.

(6) *Use of generic name on the public Inventory*. If a submitter asserts a claim of confidentiality under paragraph (b) of this section, EPA will examine the generic microorganism name proposed by the submitter.

(i) If EPA determines that the generic name proposed by the submitter is only as generic as necessary to protect the confidential identity of the particular microorganism, EPA will place that generic name on the public Inventory.

(ii) If EPA determines that the generic name proposed by the submitter is more generic than necessary to protect the confidential identity, EPA will propose in writing, for review by the submitter, an alternative generic name that will reveal the identity of the microorganism to the maximum extent possible.

(iii) If the generic name proposed by EPA is acceptable to the submitter, EPA will place that generic name on the public Inventory.

(iv) If the generic name proposed by EPA is not acceptable to the submitter, the submitter must explain in detail why disclosure of that generic name would reveal confidential business information and propose another generic name which is only as generic as necessary to protect the confidential identity of the microorganism. If EPA does not receive a response from the submitter within 30 days after the submitter receives the proposed name, EPA will place EPA's chosen generic name on the public Inventory. If the submitter does provide the information requested, EPA will review the response. If the submitter's proposed generic name is acceptable, EPA will publish that generic name on the public Inventory. If the submitter's proposed generic name is not acceptable, EPA will notify the submitter of EPA's choice of a generic name. Thirty days after this notification, EPA will place the chosen generic name on the public Inventory.

§ 725.88 Uses of a microorganism.

(a) *Assertion of claim*. A person who submits information to EPA under this part on the categories or proposed categories of use of a microorganism may assert a claim of confidentiality for this information.

(b) *Requirements for claim*. A submitter that asserts such a claim must:

(1) Report the categories or proposed categories of use of the microorganism.

(2) Provide, in nonconfidential form, a description of the uses that is only as generic as necessary to protect the confidential business information. The generic use description will be included in the **Federal Register** notice described in § 725.40.

(c) *Generic use description*. The person must submit the information required by paragraph (b) of this section by describing the uses as precisely as possible, without revealing the information which is claimed confidential, to disclose as much as possible how the use may result in human exposure to the microorganism or its release to the environment.

§ 725.92 Data from health and safety studies of microorganisms.

(a) *Information other than specific microorganism identity*. Except as provided in paragraph (b) of this section, EPA will deny any claim of confidentiality with respect to information included in a health and safety study of a microorganism, unless the information would disclose confidential business information concerning:

(1) Processes used in the manufacture or processing of a microorganism.

(2) Information which is not in any way related to the effects of a microorganism on health or the environment, such as, the name of the submitting company, cost or other financial data, product development or marketing plans, and advertising plans, for which the person submits a claim of confidentiality in accordance with § 725.80.

(b) *Microorganism identity*—(1) *Claims applicable to the period prior to commencement of manufacture or import for general commercial use*. A claim of confidentiality for the period prior to commencement of manufacture or import for general commercial use for the specific identity of a microorganism for which a health and safety study was submitted must be asserted in conjunction with a claim asserted under § 725.85(a). The submitter must substantiate each claim in accordance with the requirements of § 725.94(a).

(2) *Claims applicable to the period after commencement of manufacture or import for general commercial use*. To maintain the confidential status of the specific identity of a microorganism for which a health and safety study was submitted after commencement of manufacture or import for general commercial use, the claim must be reasserted and substantiated in conjunction with a claim under § 725.85(b). The submitter must substantiate each claim in accordance with the requirements of § 725.94(b).

(c) *Denial of confidentiality claim*. EPA will deny a claim of confidentiality for microorganism identity under paragraph (b) of this section, unless:

(1) The information would disclose processes used in the manufacture or processing of a microorganism.

(2) The microorganism identity is not necessary to interpret a health and safety study.

(d) *Use of generic names*. When EPA discloses a health and safety study containing a microorganism identity, which the submitter has claimed confidential, and if the Agency has not denied the claim under paragraph (c) of this section, EPA will identify the microorganism by the generic name selected under § 725.85.

§ 725.94 Substantiation requirements.

(a) *Claims applicable to the period prior to commencement of manufacture or import for general commercial use*—(1) *MCAN, TME, Tier I certification, and Tier II exemption request requirements*. Any person who submits a MCAN, TME, Tier I certification, or Tier II exemption request should strictly limit confidentiality claims to that information which is confidential and proprietary to the business.

(i) If any information in the submission is claimed as confidential business information, the submitter must substantiate each claim by submitting written answers to the questions in paragraphs (c), (d), and (e) of this section at the time the person submits the information.

(ii) If the submitter does not provide written substantiation as required in paragraph (a)(1)(i) of this section, the submission will be considered incomplete and the review period will not begin in accordance with § 725.33.

(2) *TERA requirements*. Any person who submits a TERA, should strictly limit confidentiality claims to that information which is confidential and proprietary to the business. If any information in such a submission is claimed as confidential business information, the submitter must have available for each of those claims, and

agree to furnish to EPA upon request, written answers to the questions in paragraphs (d) and (e) of this section.

(b) *Claims applicable to the period after commencement of manufacture or import for general commercial use.* (1) If a submitter claimed portions of the microorganism identity confidential in the MCAN and wants the identity to be listed on the confidential Inventory, the claim must be reasserted and substantiated at the time the Notice of Commencement (NOC) is submitted under § 725.190. Otherwise, EPA will list the specific microorganism identity on the public Inventory.

(2) The submitter must substantiate the claim for confidentiality of the microorganism identity by answering all of the questions in paragraphs (c), (d), and (e) in this section. In addition, the following questions must be answered:

(i) What harmful effects to the company's or institution's competitive position, if any, would result if EPA publishes on the Inventory the identity of the microorganism? How could a competitor use such information given the fact that the identity of the microorganism otherwise would appear on the TSCA Inventory with no link between the microorganism and the company or institution? How substantial would the harmful effects of disclosure be? What is the causal relationship between the disclosure and the harmful effects?

(ii) Has the identity of the microorganism been kept confidential to the extent that competitors do not know it is being manufactured or imported for general commercial use by anyone?

(c) *General questions.* The following questions must be answered in detail for each confidentiality claim:

(1) For what period of time is a claim of confidentiality being asserted? If the claim is to extend until a certain event or point in time, indicate that event or time period. Explain why the information should remain confidential until such point.

(2) Briefly describe any physical or procedural restrictions within the company or institution relating to the use and storage of the information claimed as confidential. What other steps, if any, apply to use or further disclosure of the information?

(3) Has the information claimed as confidential been disclosed to individuals outside of the company or institution? Will it be disclosed to such persons in the future? If so, what restrictions, if any, apply to use or further disclosure of the information?

(4) Does the information claimed as confidential appear, or is it referred to, in any of the following questions? If the answer is yes to any of these questions, indicate where the information appears and explain why it should nonetheless be treated as confidential.

(i) Advertising or promotional materials for the microorganism or the resulting end product?

(ii) Material safety data sheets or other similar materials for the microorganism or the resulting end product?

(iii) Professional or trade publications?

(iv) Any other media available to the public or to competitors?

(v) Patents?

(vi) Local, State, or Federal agency public files?

(5) Has EPA, another Federal agency, a Federal court, or a State made any confidentiality determination regarding the information claimed as confidential? If so, provide copies of such determinations.

(6) For each type of information claimed confidential, describe the harm to the company's or institution's competitive position that would result if this information were disclosed. Why would this harm be substantial? How could a competitor use such information? What is the causal connection between the disclosure and harm?

(7) If EPA disclosed to the public the information claimed as confidential, how difficult would it be for the competitor to enter the market for the resulting product? Consider such constraints as capital and marketing cost, specialized technical expertise, or unusual processes.

(d) *Microorganism identity and production method.* If confidentiality claims are asserted for the identity of the microorganism or information on how the microorganism is produced, the following questions must be answered:

(1) Has the microorganism or method of production been patented in the U.S. or elsewhere? If so, why is confidentiality necessary?

(2) Does the microorganism leave the site of production or testing in a form which is accessible to the public or to competitors? What is the cost to a competitor, in time and money, to develop appropriate use conditions? What factors facilitate or impede product analysis?

(3) For each additional type of information claimed as confidential, explain what harm would result from disclosure of each type of information if the identity of the microorganism were to remain confidential.

(e) *Health and safety studies of microorganisms.* If confidentiality claims are asserted for information in a health or safety study of a microorganism, the following questions must be answered:

(1) Would the disclosure of the information claimed confidential reveal: confidential process information, or information unrelated to the effects of the microorganism on health and the environment. Describe the causal connection between the disclosure and harm.

(2) Does the company or institution assert that disclosure of the microorganism identity is not necessary to interpret any health and safety studies which have been submitted? If so, explain how a less specific identity would be sufficient to interpret the studies.

§ 725.95 Public file.

All information submitted, including any health and safety study of a microorganism and other supporting documentation, will become part of the public file for that submission, unless such materials are claimed confidential. In addition, EPA may add materials to the public file, unless such materials are claimed confidential. Any of the nonconfidential material described in this subpart will be available for public inspection in the TSCA Public Docket Office, Rm. NE–B607, 401 M St., SW., Washington, DC, between the hours of noon to 4 p.m., Monday through Friday, excluding legal holidays.

Subpart D—Microbial Commercial Activities Notification Requirements

§ 725.100 Scope and purpose.

(a) This subpart establishes procedures for submission of a notice to EPA under section 5(a) of the Act for persons who manufacture, import, or process microorganisms for commercial purposes. This notice is called a Microbial Commercial Activity Notice (MCAN). It is expected that MCANs will in general only be submitted for microorganisms intended for general commercial use. Persons who manufacture, import, or process a microorganism in small quantities solely for research and development as defined in § 725.3 are not required to submit a notice to EPA. Persons who manufacture, import, or process a microorganism for research and development activities that do not fit the definition of small quantities solely for research and development may nonetheless qualify for more limited reporting requirements in Subpart E, including the TERA which can be used for review of research and development involving environmental release.

(b) Persons subject to MCAN submission are described in § 725.105.

(c) Exclusions and exemptions specific to MCAN submissions are described in § 725.110.

(d) Submission requirements applicable specifically to MCANs are described at § 725.150.

(e) Data requirements for MCANs are set forth in §§ 725.155 and 725.160.

(f) EPA review procedures specific to MCANs are set forth in § 725.170.

(g) Subparts A through C of this part apply to any MCAN submitted under this subpart.

§ 725.105 Persons who must report.

(a) *Manufacturers of new microorganisms.* (1) MCAN submission is required for any person who intends to manufacture for commercial purposes in the United States a new microorganism. Exclusions are described in § 725.110.

(2) If a person contracts with a manufacturer to produce or process a new microorganism and the manufacturer produces or processes the microorganism exclusively for that person, and that person specifies the identity of the microorganism, and controls the total amount produced and the basic technology for the plant process, then that person must submit the MCAN. If it is unclear who must report, EPA should be contacted to determine who must submit the MCAN.

(3) Only manufacturers that are incorporated, licensed, or doing business in the United States may submit a MCAN.

(b) *Importers of new microorganisms.* (1) MCAN submission is required for a person who intends to import into the United States for commercial purposes a new microorganism. Exclusions are described in § 725.110.

(2) When several persons are involved in an import transaction, the MCAN must be submitted by the principal importer. If no one person fits the principal importer definition in a particular transaction, the importer should contact EPA to determine who must submit the MCAN for that transaction.

(3) Except as otherwise provided in paragraph (b)(4) of this section, the provisions of this subpart D apply to each person who submits a MCAN for a new microorganism which such person intends to import for a commercial purpose. In addition, each importer must comply with paragraph (b)(4) of this section.

(4) EPA will hold the principal importer, or the importer that EPA determines must submit the MCAN when there is no principal importer under paragraph (b)(2) of this section, liable for complying with this part, for completing the MCAN, and for the completeness and truthfulness of all information which it submits.

(c) *Manufacturers, importers, or processors of microorganisms for a significant new use.* MCAN submission is required for any person who intends to manufacture, import, or process for commercial purposes a microorganism identified as having one or more significant new uses in subpart M of this part, and who intends either to engage in a designated significant new use of the microorganism or intends to distribute it in commerce. Persons excluded from reporting on significant new uses of microorganisms and additional procedures for reporting are described in subpart L of this part.

§ 725.110 Persons not subject to this subpart.

Persons are not subject to the requirements of this subpart for the following activities:

(a) Manufacturing, importing, or processing solely for research and development microorganisms that meet the requirements for an exemption under subpart E of this part.

(b) Manufacturing, importing, or processing microorganisms for test marketing activities which have been granted an exemption under subpart F of this part.

(c) Manufacturing or importing new microorganisms under the conditions of a Tier I or Tier II exemption under subpart G of this part.

§ 725.150 Procedural requirements for this subpart.

General requirements for all MCANs under this part are contained in subparts A through C of this part. In addition, the following requirements apply to MCANs submitted under this subpart:

(a) *When to submit a MCAN.* A MCAN must be submitted at least 90 calendar days prior to manufacturing or importing a new microorganism and at least 90 calendar days prior to manufacturing, importing, or processing a microorganism for a significant new use.

(b) *Section 5(b) of the Act.* The submitter must comply with any applicable requirement of section 5(b) of the Act for the submission of test data.

(c) *Contents of a MCAN.* Each person who submits a MCAN under this subpart must provide the information and test data described in §§ 725.155 and 725.160.

(d) *Recordkeeping.* Each person who submits a MCAN under this subpart must comply with the recordkeeping requirements of § 725.65.

§ 725.155 Information to be included in the MCAN.

(a) Each person who is required by this part to submit a MCAN must include the information specified in paragraphs (c) through (h) of this section, to the extent it is known to or reasonably ascertainable by that person. However, no person is required to include information which relates solely to exposure of humans or ecological populations outside of the United States.

(b) Each person should also submit, in writing, all other information known to or reasonably ascertainable by that person that would permit EPA to make a reasoned evaluation of the health and environmental effects of the microorganism, or any microbial mixture or article, including information on its effects on humans, animals, plants, and other microorganisms, and in the environment. The information to be submitted under this subpart includes the information listed in paragraphs (c) through (h) of this section relating to the manufacture, processing, distribution in commerce, use, and disposal of the new microorganism.

(c) *Submitter identification.* (1) The name and headquarters address of the submitter.

(2) The name, address, and office telephone number (including area code) of the principal technical contact representing the submitter.

(d) *Microorganism identity information.* Persons must submit sufficient information to allow the microorganism to be accurately and unambiguously identified for listing purposes as required by § 725.12.

(1) *Description of the recipient microorganism and the new microorganism.* (i) Data substantiating the taxonomy of the recipient microorganism and the new microorganism to the level of strain, as appropriate. In lieu of data, EPA will accept a letter from a culture collection substantiating taxonomy, provided EPA, upon request to the submitter, may have access to the data supporting the taxonomic designation.

(ii) Information on the morphological and physiological features of the new microorganism.

(iii) Other specific data by which the new microorganism may be uniquely identified for Inventory purposes.

(2) *Genetic construction of the new microorganism.* (i) Data substantiating the taxonomy of the donor organism(s). In lieu of data, EPA will accept a letter from a culture collection substantiating taxonomy, provided EPA, upon request to the submitter, may have access to the

data supporting the taxonomic designation.

(ii) Description of the traits for which the new microorganism has been selected or developed and other traits known to have been added or modified.

(iii) A detailed description of the genetic construction of the new microorganism, including the technique used to modify the microorganism (e.g., fusion of cells, injection of DNA, electroporation or chemical poration, or methods used for induced mutation and selection). The description should include, for example, a description of the introduced genetic material, including any regulatory sequences and structural genes and the products of those genes; how the introduced genetic material is expected to affect behavior of the recipient; expression, alteration, and stability of the introduced genetic material; methods for vector construction and introduction; and a description of the regulatory and structural genes that are components of the introduced genetic material, including genetic maps of the introduced sequences.

(3) *Phenotypic and ecological characteristics*. (i) Habitat, geographical distribution, and source of the recipient microorganism.

(ii) Survival and dissemination under relevant environmental conditions including a description of methods for detecting the new or recipient microorganism(s) in the environment and the sensitivity limit of detection for these techniques.

(iii) A description of anticipated biological interactions with and effects on target organisms and other organisms such as competitors, prey, hosts, symbionts, parasites, and pathogens; a description of host range; a description of pathogenicity, infectivity, toxicity, virulence, or action as a vector of pathogens; and capacity for genetic transfer under laboratory and relevant environmental conditions.

(iv) A description of anticipated involvement in biogeochemical or biological cycling processes, involvement in rate limiting steps in mineral or nutrient cycling, or involvement in inorganic compounds cycling (such as possible sequestration or transformation of heavy metals).

(e) *Byproducts*. A description of the byproducts resulting from the manufacture, processing, use, and disposal of the new microorganism.

(f) *Total production volume*. The estimated maximum amount of the new microorganism intended to be manufactured or imported during the first year of production and the estimated maximum amount to be manufactured or imported during any consecutive 12–month period during the first 3 years of production. This estimate may be by weight or volume and should include an estimation of viability (i.e., viable cells per unit volume or colony forming units per unit dry weight).

(g) *Use information*. A description of intended categories of use by function and application, the estimated percent of production volume devoted to each category of use, and the percent of the new microorganism in the formulation for each commercial or consumer use.

(h) *Worker exposure and environmental release*. (1) For sites controlled by the submitter:

(i) The identity of sites where the new microorganism will be manufactured, processed, or used. For purposes of this section, the site for a person who imports a new microorganism is the site of the operating unit within the person's organization which is directly responsible for importing the new microorganism and which controls the import transaction. The import site may in some cases be the organization's headquarters office in the United States.

(ii) A process description of each manufacture, processing, and use operation, which includes a diagram of the major unit operations and conversions, the identity and entry point of all feedstocks, and the identity of any possible points of release of the new microorganism from the process, including a description of all controls, including engineering controls, used to prevent such releases.

(iii) Worker exposure information, including worker activities, physical form of process streams which contain the new microorganism to which workers may be exposed, the number of workers, and the duration of activities.

(iv) Information on release of the new microorganism to the environment, including the quantity and media of release and type of control technology used.

(v) A narrative description of the intended transport of the new microorganism, including the means of transport, containment methods to be used during transport, and emergency containment procedures to be followed in case of accidental release.

(vi) Procedures for disposal of any articles, waste, clothing, or other equipment involved in the activity, including procedures for inactivation of the new microorganism, containment, disinfection, and disposal of contaminated items.

(2) For sites not controlled by the submitter, a description of each type of processing and use operation involving the new microorganism, including identification of the estimated number of processing or use sites, situations in which worker exposure to and/or environmental release of the new microorganism will occur, the number of workers exposed and the duration of exposure; procedures for transport of the new microorganism and for disposal, including procedures for inactivation of the new microorganism; and control measures which limit worker exposure and environmental release.

§ 725.160 Submission of health and environmental effects data.

(a) *Test data on the new microorganism in the possession or control of the submitter*. (1) Except as provided in § 725.25(h), and in addition to the information required by § 725.155(d)(3), each MCAN must contain all test data in the submitter's possession or control which are related to the effects on health or the environment of any manufacture, processing, distribution in commerce, use, or disposal of the new microorganism or any microbial mixture or article containing the new microorganism, or any combination of such activities. This includes test data concerning the new microorganism in a pure culture or formulated form as used or as intended to be used in one of the activities listed above.

(2) A full report or standard literature citation must be submitted for the following types of test data:

(i) Health effects data.

(ii) Ecological effects data.

(iii) Physical and chemical properties data.

(iv) Environmental fate characteristics.

(v) Monitoring data and other test data related to human exposure to or environmental release of the new microorganism.

(3)(i) If the data do not appear in the open scientific literature, the submitter must provide a full report. A full report includes the experimental methods and materials, results, discussion and data analysis, conclusions, references, and the name and address of the laboratory that developed the data.

(ii) If the data appear in the open scientific literature, the submitter need only provide a standard literature citation. A standard literature citation includes author, title, periodical name, date of publication, volume, and page numbers.

(4)(i) If a study, report, or test is incomplete when a person submits a MCAN, the submitter must identify the nature and purpose of the study; name

and address of the laboratory developing the data; progress to date; types of data collected, significant preliminary results; and anticipated completion date.

(ii) If a test or experiment is completed before the MCAN review period ends, the person must submit the study, report, or test, as specified in paragraph (a)(3)(i) of this section, to the address listed in § 725.25(c) within 10 days of receiving it, but no later than 5 days before the end of the review period. If the test or experiment is completed during the last 5 days of the review period, the submitter must immediately inform its EPA contact for that submission by telephone.

(5) For test data in the submitter's possession or control which are not listed in paragraph (a)(2) of this section, a person is not required to submit a complete report. The person must submit a summary of the data. If EPA so requests, the person must submit a full report within 10 days of the request, but no later than 5 days before the end of the review period.

(6) All test data described under paragraph (a) of this section are subject to these requirements, regardless of their age, quality, or results.

(b) *Other data concerning the health and environmental effects of the new microorganism that are known to or reasonably ascertainable by the submitter.* (1) Except as provided in § 725.25(h), and in addition to the information required by § 725.155(c)(3), any person who submits a MCAN must describe the following data, including any data from a health and safety study of a microorganism, if the data are related to effects on health or the environment of any manufacture, processing, distribution in commerce, use, or disposal of the microorganism, of any microbial mixture or article containing the new microorganism, or of any combination of such activities:

(i) Any data, other than test data, in the submitter's possession or control.

(ii) Any data, including test data, which are not in the submitter's possession or control, but which are known to or reasonably ascertainable by the submitter. For the purposes of this section, data are known to or reasonably ascertainable by the submitter if the data are known to any of its employees or other agents who are associated with the research and development, test marketing, or commercial marketing of the microorganism.

(2) Data that must be described include data concerning the new microorganism in a pure culture or formulated form as used or as intended to be used in one of the activities listed in paragraph (b)(1) of this section.

(3) The description of data reported under paragraph (b) of this section must include:

(i) If the data appear in the open scientific literature, a standard literature citation, which includes the author, title, periodical name, date of publication, volume, and pages.

(ii) If the data are not available in the open scientific literature, a description of the type of data and summary of the results, if available, and the names and addresses of persons the submitter believes may have possession or control of the data.

(4) All data described in paragraph (b) of this section are subject to these requirements, regardless of their age, quality, or results; and regardless of whether they are complete at the time the MCAN is submitted.

§ 725.170 EPA review of the MCAN.

General procedures for review of all submissions under this part are contained in §§ 725.28 through 725.60. In addition, the following procedures apply to EPA review of MCANs submitted under this subpart:

(a) Length of the review period. The MCAN review period specified in section 5(a) of the Act runs for 90 days from the date the Document Control Officer for the Office of Pollution Prevention and Toxics receives a complete MCAN, or the date EPA determines the MCAN is complete under § 725.33, unless the Agency extends the period under section 5(c) of the Act and § 725.56.

(b) Notice of expiration of MCAN review period. (1) EPA will notify the submitter that the MCAN review period has expired or that EPA has completed its review of the MCAN. Expiration of the review period does not constitute EPA approval or certification of the new microorganism, and does not mean that EPA may not take regulatory action against the microorganism in the future.

(2) After expiration of the MCAN review period, in the absence of regulatory action by EPA under section 5(e), 5(f), or 6(a) of the Act, the submitter may manufacture or import the microorganism even if the submitter has not received notice of expiration.

(3) Early notification that EPA has completed its review does not permit commencement of manufacture or import prior to the expiration of the 90–day MCAN review period.

(c) No person submitting a MCAN in response to the requirements of this subpart may manufacture, import, or process a microorganism subject to this subpart until the review period, including all extensions and suspensions, has expired.

§ 725.190 Notice of commencement of manufacture or import.

(a) *Applicability.* Any person who commences the manufacture or import of a new microorganism for nonexempt, commercial purposes for which that person previously submitted a section 5(a) notice under this part must submit a notice of commencement (NOC) of manufacture or import.

(b) *When to report.* (1) If manufacture or import for nonexempt, commercial purposes begins on or after May 27, 1997, the submitter must submit the NOC to EPA no later than 30 calendar days after the first day of such manufacture or import.

(2) If manufacture or import for nonexempt, commercial purposes began or will begin before May 27, 1997, the submitter must submit the NOC by May 27, 1997.

(3) Submission of an NOC prior to the commencement of manufacture or import is a violation of section 15 of the Act.

(c) *Information to be reported.* The NOC must contain the following information: Specific microorganism identity, MCAN number, and the date when manufacture or import commences. If the person claimed microorganism identity confidential in the MCAN, and wants the identity to be listed on the confidential Inventory, the claim must be reasserted and resubstantiated in accordance with § 725.85(b). Otherwise, EPA will list the specific microorganism identity on the public Inventory.

(d) *Where to submit.* NOCs should be submitted to the address listed in § 725.25(c).

Subpart E—Exemptions for Research and Development Activities

§ 725.200 Scope and purpose.

(a) This subpart describes exemptions from the reporting requirements under subpart D of this part for research and development activities involving microorganisms.

(b) In lieu of complying with subpart D of this part, persons described in § 725.205 may submit a TSCA Experimental Release Application (TERA) for research and development activities involving microorganisms or otherwise comply with this subpart.

(c) Exemptions from part 725 are provided at §§ 725.232, 725.234, and 725.238.

(d) Submission requirements specific for TERAs are described at § 725.250.

(e) Data requirements for TERAs are set forth in §§ 725.255 and 725.260.

(f) EPA review procedures specific for TERAs are set forth in §§ 725.270 and 725.288.

(g) Subparts A through C of this part apply to any submission under this subpart.

§ 725.205 Persons who may report under this subpart.

(a) Commercial research and development activities involving new microorganisms or significant new uses of microorganisms are subject to reporting under this part unless they qualify for an exemption under this part.

(b) Commercial purposes for research and development means that the activities are conducted with the purpose of obtaining an immediate or eventual commercial advantage for the researcher and would include:

(1) All research and development activities which are funded directly, in whole or in part, by a commercial entity regardless of who is actually conducting the research. Indications that the research and development activities are funded directly, in whole or in part, may include, but are not limited to:

(i) Situations in which a commercial entity contracts directly with a university or researcher; or

(ii) Situations in which a commercial entity gives a conditional grant where the commercial entity holds patent rights, or establishes a joint venture where the commercial entity holds patent or licensing rights; or

(iii) Any other situation in which the commercial entity intends to obtain an immediate or eventual commercial advantage for the commercial entity and/or the researcher.

(2) Research and development activities that are not funded directly by a commercial entity, if the researcher intends to obtain an immediate or eventual commercial advantage. Indications that the researcher intends to obtain an immediate or eventual commercial advantage may include, but are not limited to:

(i) The research is directed toward developing a commercially viable improvement of a product already on the market; or

(ii) The researcher has sought or is seeking commercial funding for the purpose of developing a commercial application; or

(iii) The researcher or university has sought or is seeking a patent to protect a commercial application which the research is developing; or

(iv) Other evidence that the researcher is aware of a commercial application for the research and has directed the research toward developing that application.

(c) Certain research and development activities involving microorganisms subject to jurisdiction under the Act are exempt from reporting under this part. A person conducting research and development activities which meet the conditions for the exemptions described in §§ 725.232, 725.234, or 725.238 is exempt from TERA reporting under this subpart.

(d) A microorganism is not exempt from reporting under subpart D of this part if any amount of the microorganism, including as part of a mixture, is processed, distributed in commerce, or used, for any commercial purpose other than research and development.

(e) Quantities of the inactivated microorganism, or mixtures or articles containing the inactivated microorganism, remaining after completion of research and development activities may be disposed of as a waste in accordance with applicable Federal, State, and local regulations.

(f) A person who manufactures, imports, or processes a microorganism solely for research and development is not required to comply with the requirements of this section if:

(1) The person is manufacturing a microbial pesticide identified in § 172.45(c), or

(2) The person is manufacturing a microbial pesticide for which an Experimental Use Permit is required, pursuant to § 172.3; or

(3) The person is manufacturing a microbial pesticide for which a notification or an Experimental Use Permit is not required to be submitted.

§ 725.232 Activities subject to the jurisdiction of other Federal programs or agencies.

This part does not apply to any research and development activity that meets all of the following conditions.

(a) The microorganism is manufactured, imported, or processed solely for research and development activities.

(b) There is no intentional testing of a microorganism outside of a structure, as structure is defined in § 725.3.

(c)(1) The person receives research funds from another Federal agency, and the funds are awarded on the condition that the research will be conducted in accordance with the relevant portions of the NIH Guidelines, or

(2) A Federal agency or program otherwise imposes the legally binding requirement that the research is to be conducted in accordance with relevant portions of the NIH Guidelines.

§ 725.234 Activities conducted inside a structure.

A person who manufactures, imports, or processes a microorganism is not subject to the reporting requirements under subpart D of this part if all of the following conditions are met:

(a) The microorganism is manufactured, imported, or processed solely for research and development activities.

(b) The microorganism is used by, or directly under the supervision of, a technically qualified individual, as defined in § 725.3. The technically qualified individual must maintain documentation of the procedures selected to comply with paragraph (d) of this section and must ensure that the procedures are used.

(c) There is no intentional testing of a microorganism outside of a structure, as structure is defined in § 725.3.

(d) Containment and/or inactivation controls. (1) Selection and use of containment and/or inactivation controls inside a structure for a particular microorganism shall take into account the following:

(i) Factors relevant to the organism's ability to survive in the environment.

(ii) Potential routes of release in air, solids and liquids; in or on waste materials and equipment; in or on people, including maintenance and custodial personnel; and in or on other organisms, such as insects and rodents.

(iii) Procedures for transfer of materials between facilities.

(2) The technically qualified individual's selection of containment and/or inactivation controls shall be approved and certified by an authorized official (other than the TQI) of the institution that is conducting the test prior to the commencement of the test.

(3) Records shall be developed and maintained describing the selection and use of containment and/or inactivation controls, as specified in § 725.235(c). These records, which must be maintained at the location where the research and development activity is being conducted, shall be submitted to EPA upon written request and within the time frame specified in EPA's request.

(4) Subsequent to EPA review of records in accordance with paragraph (d)(3) of this section, changes to the containment/inactivation controls selected under paragraph (d)(1) of this section must be made upon EPA order. Failure to comply with EPA's order shall result in automatic loss of eligibility for an exemption under this section.

(e) The manufacturer, importer, or processor notifies all persons in its

employ or to whom it directly distributes the microorganism, who are engaged in experimentation, research, or analysis on the microorganism, including the manufacture, processing, use, transport, storage, and disposal of the microorganism associated with research and development activities, of any risk to health, identified under § 725.235(a), which may be associated with the microorganism. The notification must be made in accordance with § 725.235(b).

§ 725.235 Conditions of exemption for activities conducted inside a structure.

(a) *Determination of risks.* To determine whether notification under § 725.234(e) is required, the manufacturer, importer, or processor must do one of the following:

(1) For research conducted in accordance with the NIH Guidelines, the manufacturer, importer, or processor must meet the conditions laid out at IV-B-4-d of the NIH Guidelines; or

(2) For all other research conducted in accordance with § 725.234, the manufacturer, importer, or processor must review and evaluate the following information to determine whether there is reason to believe there is any risk to health which may be associated with the microorganism:

(i) Information in its possession or control concerning any significant adverse reaction of persons exposed to the microorganism which may reasonably be associated with such exposure.

(ii) Information provided to the manufacturer, importer, or processor by a supplier or any other person concerning a health risk believed to be associated with the microorganism.

(iii) Health and environmental effects data in its possession or control concerning the microorganism.

(iv) Information on health effects which accompanies any EPA rule or order issued under TSCA section 4, 5, or 6 of the Act that applies to the microorganism and of which the manufacturer, importer, or processor has knowledge.

(b) *Notification to employees and others.* (1) The manufacturer, importer, or processor must notify the persons identified in § 725.234(e) by means of a container labeling system, conspicuous placement of notices in areas where exposure may occur, written notification to each person potentially exposed, or any other method of notification which adequately informs persons of health risks which the manufacturer, importer, or processor has reason to believe may be associated with the microorganism, as determined under paragraph (a) of this section.

(2) If the manufacturer, importer, or processor distributes a microorganism manufactured, imported, or processed under this section to persons not in its employ, the manufacturer, importer, or processor must in written form:

(i) Notify those persons that the microorganism is to be used only for research and development purposes and the requirements of § 725.234 are to be met.

(ii) Provide the notice of health risks specified in paragraph (b)(1) of this section.

(3) The adequacy of any notification under this section is the responsibility of the manufacturer, importer, or processor.

(c) *Recordkeeping.* (1) For research conducted in accordance with the NIH Guidelines, a person who manufactures, imports, or processes a microorganism under this section must retain the following records:

(i) Documentation that the NIH Guidelines have been adhered to. Such documentation shall include:

(A) For experiments subject to Institutional Biosafety Committee review, or notification simultaneous with initiation of the experiment, the information submitted for review or notification, along with standard laboratory records, shall satisfy the recordkeeping requirements specified in § 725.234(d)(3).

(B) For experiments exempt from Institutional Biosafety Committee review or notification simultaneous with initiation of the experiment, documentation of the exemption, along with standard laboratory records, shall satisfy the recordkeeping requirement specified in § 725.234(d)(3).

(ii) Documentation of how the following requirements are satisfied under the NIH Guidelines:

(A) Copies or citations to information reviewed and evaluated to determine the need to make any notification of risk.

(B) Documentation of the nature and method of notification of risk, including copies of any labels or written notices used.

(C) The names and addresses of any persons other than the manufacturer, importer, or processor to whom the substance is distributed, the identity of the microorganism, the amount distributed, and copies of the notifications required.

(2) For all other research conducted in accordance with § 725.234, a person who manufacturers, imports, or processes a microorganism under this section, must maintain the following records:

(i) Records describing selection and use of containment and/or inactivation controls required by § 725.234(d)(3) and certification by an authorized official required by § 725.234(d)(2) for each microorganism.

(ii) Copies or citations to information reviewed and evaluated under paragraph (a) of this section to determine the need to make any notification of risk.

(iii) Documentation of the nature and method of notification under paragraph (b)(1) of this section, including copies of any labels or written notices used.

(iv) The names and addresses of any persons other than the manufacturer, importer, or processor to whom the substance is distributed, the identity of the microorganism, the amount distributed, and copies of the notifications required under paragraph (b)(2) of this section.

§ 725.238 Activities conducted outside a structure.

(a) *Exemption.* (1) Research and development activities involving intentional testing in the environment of certain microorganisms listed in § 725.239 may be conducted without prior review by EPA if all of the conditions of this section and § 725.239 are met.

(2) The research and development activity involving a microorganism listed in § 725.239 must be conducted by, or directly under the supervision of, a technically qualified individual, as defined in § 725.3.

(b) *Certification.* To be eligible for the exemption under this section, a manufacturer or importer must submit to EPA prior to initiation of the activity a document signed by an authorized official containing the following information:

(1) Name, address, and telephone number of the manufacturer or importer.

(2) Location, estimated duration, and planned start date of the test.

(3) Certification of the following:

(i) Compliance with the conditions of the exemption specified for the microorganism in § 725.239.

(ii) If state and/or local authorities have been notified of the activity, evidence of notification.

(c) *Recordkeeping.* Persons who conduct research and development activities under this section must comply with the recordkeeping requirements of § 725.65 and retain documentation that supports their compliance with the requirements of this section and the specific requirements for the microorganism listed in § 725.239.

§ 725.239 Use of specific microorganisms in activities conducted outside a structure.

(a) *Bradyrhizobium japonicum*. To qualify for an exemption under this section, all of the following conditions must be met for a test involving *Bradyrhizobium japonicum*:

(1) *Characteristics of recipient microorganism*. The recipient microorganism is limited to strains of *Bradyrhizobium japonicum*.

(2) *Modification of traits*. (i) The introduced genetic material must meet the criteria for poorly mobilizable listed in § 725.421(c).

(ii) The introduced genetic material must consist only of the following components:

(A) The structural gene(s) of interest, which have the following limitations:

(*1*) For structural genes encoding marker sequences, the gene is limited to the *aadH* gene, which confers resistance to the antibiotics streptomycin and spectinomycin.

(*2*) For traits other than antibiotic resistance, the structural gene must be limited to the genera *Bradyrhizobium* and *Rhizobium*.

(B) The regulatory sequences permitting the expression of solely the gene(s) of interest.

(C) Associated nucleotide sequences needed to move genetic material, including linkers, homopolymers, adaptors, transposons, insertion sequences, and restriction enzyme sites.

(D) The vector nucleotide sequences needed for vector transfer.

(E) The vector nucleotide sequences needed for vector maintenance.

(3) *Limitations on exposure*. (i) The test site area must be no more than 10 terrestrial acres.

(ii) The technically qualified individual must select appropriate methods to limit the dissemination of modified *Bradyrhizobium japonicum*.

(b) *Rhizobium meliloti*. To qualify for an exemption under this section, all of the following conditions must be met for a test involving *Rhizobium meliloti*:

(1) *Characteristics of recipient microorganism*. The recipient microorganism is limited to strains of *Rhizobium meliloti*.

(2) *Modification of traits*. (i) The introduced genetic material must meet the criteria for poorly mobilizable listed in § 725.421(c) of this part.

(ii) The introduced genetic material must consist only of the following components:

(A) The structural gene(s) of interest, which have the following limitations:

(*1*) For structural genes encoding marker sequences, the gene is limited to the *aadH* gene, which confers resistance to the antibiotics streptomycin and spectinomycin.

(*2*) For traits other than antibiotic resistance, the structural gene must be limited to the genera *Bradyrhizobium* and *Rhizobium*.

(B) The regulatory sequences permitting the expression of solely the gene(s) of interest.

(C) Associated nucleotide sequences needed to move genetic material, including linkers, homopolymers, adaptors, transposons, insertion sequences, and restriction enzyme sites.

(D) The vector nucleotide sequences needed for vector transfer.

(E) The vector nucleotide sequences needed for vector maintenance.

(3) *Limitations on exposure*. (i) The test site area must be no more than 10 terrestrial acres.

(ii) The technically qualified individual must select appropriate methods to limit the dissemination of modified *Rhizobium meliloti*.

§ 725.250 Procedural requirements for the TERA.

General requirements for all submissions under this part are contained in subparts A through C of this part. In addition, the following requirements apply to TERAs submitted under this subpart:

(a) When to submit the TERA. Each person who is eligible to submit a TERA under this subpart must submit the TERA at least 60 calendar days before the person intends to initiate the proposed research and development activity.

(b) Contents of the TERA. Each person who submits a TERA under this subpart must provide the information and test data described in §§ 725.255 and 725.260. In addition, the submitter must supply sufficient information to enable EPA to evaluate the effects of all activities for which approval is requested.

(c) A person may submit a TERA for one or more microorganisms and one or more research and development activities, including a research program.

(d) EPA will either approve the TERA, with or without conditions, or disapprove it under procedures established in this subpart.

(e) The manufacturer, importer, or processor who receives a TERA approval must comply with all terms of the approval, as well as conditions described in the TERA, and remains liable for compliance with all terms and conditions, regardless of who conducts the research and development activity. Any person conducting the research and development activity approved under the TERA must comply with all terms of the TERA approval, as well as the conditions described in the TERA.

(f) Recordkeeping. Persons submitting a TERA must comply with the recordkeeping requirements of § 725.65. In addition, the following requirements apply to TERAs:

(1) Each person submitting a TERA under this part must retain documentation of information contained in the TERA for a period of 3 years from the date that the results of the study are submitted to the Agency.

(2) Summaries of all data, conclusions, and reports resulting from the conduct of the research and development activity under the TERA must be submitted to the EPA address identified in § 725.25(c) within 1 year of the termination of the activity.

§ 725.255 Information to be included in the TERA.

(a) To review a TERA, EPA must have sufficient information to permit a reasoned evaluation of the health and environmental effects of the planned test in the environment. The person seeking EPA approval must submit all information known to or reasonably ascertainable by the submitter on the microorganism(s) and the research and development activity, including information not listed in paragraphs (c), (d), and (e) of this section that the person believes will be useful for EPA's risk assessment. The TERA must be in writing and must include at least the information described in the following paragraphs.

(b) When specific information is not submitted, an explanation of why such information is not available or not applicable must be included.

(c) Persons applying for a TERA, must include the submitter identification and microorganism identity information required for MCANs in § 725.155(c), (d)(1), and (d)(2).

(d) Persons applying for a TERA must submit phenotypic and ecological characteristics information required in § 725.155(d)(3) as it relates directly to the conditions of the proposed research and development activity.

(e) Persons applying for a TERA must also submit the following information about the proposed research and development activity:

(1) *A detailed description of the proposed research and development activity*. (i) The objectives and significance of the activity and a rationale for testing the microorganisms in the environment.

(ii) Number of microorganisms released (including viability per volume if applicable) and the method(s) of application or release.

(iii) Characteristics of the test site(s), including location, geographical,

physical, chemical, and biological features, proximity to human habitation or activity, and description of site characteristics that would influence dispersal or confinement.

(iv) Target organisms (if the microorganism(s) to be tested has an intended target), including identification of each target organism and anticipated mechanism and result of interaction.

(v) Planned start date and duration of each activity.

(vi) If State and/or local authorities have been notified of the activity, evidence of notification.

(2) *Information on monitoring, confinement, mitigation, and emergency termination procedures*. (i) Confinement procedures for the activity, access and security measures, and procedures for routine termination of the activity.

(ii) Mitigation and emergency procedures.

(iii) Measures to detect and control potential adverse effects.

(iv) Name of principal investigator and chief of site personnel responsible for emergency procedures.

(v) Personal protective equipment, engineering controls, and procedures to be followed to minimize dispersion of the microorganism(s) by people, machinery, or equipment.

(vi) Procedures for disposal of any articles, waste, clothing, machinery, or other equipment involved in the experimental release, including methods for inactivation of the microorganism(s), containment, disinfection, and disposal of contaminated items.

§ 725.260 Submission of health and environmental effects data.

Each TERA must contain all available data concerning actual or potential effects on health or the environment of the new microorganism that are in the possession or control of the submitter and a description of other data known to or reasonably ascertainable by the submitter that will permit a reasoned evaluation of the planned test in the environment. The data must be reported in the manner described in § 725.160(a)(3) and (b)(3).

§ 725.270 EPA review of the TERA.

General procedures for review of all submissions under this part are contained in §§ 725.28 through 725.60. In addition, the following procedures apply to EPA review of applications submitted under this subpart:

(a) *Length of the review period*. (1) The review period for the TERA will be 60 days from the date the Document Control Officer for the Office of Pollution Prevention and Toxics receives a complete TERA, or the date EPA determines the TERA is complete under § 725.33, unless EPA finds good cause for an extension under § 725.56.

(2) A submitter shall not proceed with the research and development activity described in the TERA unless and until EPA provides written approval of the TERA. A submitter may receive early approval if a review is completed in less than 60 days.

(b) *EPA decision regarding proposed TERA activity*. (1) A decision concerning a TERA under this subpart will be made by the Administrator, or a designee.

(2) If EPA determines that the proposed research and development activity for the microorganism does not present an unreasonable risk of injury to health or the environment, EPA will notify the submitter that the TERA is approved and that the submitter can proceed with the proposed research and development activity described in the TERA.

(3) EPA may include requirements and conditions in its approval of the TERA that would be stated in the TERA approval under paragraph (c) of this section.

(4) If EPA concludes that it cannot determine that the proposed research and development activity described in the TERA will not present an unreasonable risk of injury to health or the environment, EPA will deny the TERA and will provide reasons for the denial in writing.

(c) *TERA approval*. (1) A TERA approval issued by EPA under this section is legally binding on the TERA submitter.

(2) When EPA approves a TERA, the submitter must conduct the research and development activity only as described in the TERA and in accordance with any requirements and conditions prescribed by EPA in its approval of the TERA.

(3) Any person who fails to conduct the research and development activity as described in the TERA and in accordance with any requirements and conditions prescribed by EPA in its approval of the TERA under this section, shall be in violation of sections 5 and 15 of the Act and be subject to civil and criminal penalties under section 16 of the Act.

§ 725.288 Revocation or modification of TERA approval.

(a) *Significant questions about risk*. (1) If, after approval of a TERA under this subpart, EPA receives information which raises significant questions about EPA's determination that the activity does not present an unreasonable risk of injury to health or the environment, EPA will notify the submitter in writing of those questions.

(2) The submitter may, within 10 days of receipt of EPA's notice, provide in writing additional information or arguments concerning the significance of the questions and whether EPA should modify or revoke the approval of the TERA.

(3) After considering any such information and arguments, EPA will decide whether to change its determination regarding approval of the TERA.

(i) If EPA determines that the activity will not present an unreasonable risk of injury to health or the environment, it will notify the submitter in writing. To make this finding, EPA may prescribe additional conditions which must be followed by the submitter.

(ii) If EPA determines that it can no longer conclude that the activity will not present an unreasonable risk of injury to health or the environment, it will notify the submitter in writing that EPA is revoking its approval and state its reasons. In that event, the submitter must terminate the research and development activity within 48 hours of receipt of the notice in accordance with directions provided by EPA in the notice.

(b) *Evidence of unreasonable risk*. (1) If, after approval of a TERA under this subpart, EPA determines that the proposed research and development activity will present an unreasonable risk of injury to health or the environment, EPA will notify the submitter in writing and state its reasons.

(2) In the notice, EPA may prescribe additional safeguards to address or reduce the risk, or may instruct the submitter to suspend the research and development activities.

(3) Within 48 hours, the submitter must implement the instructions contained in the notice. The submitter may then submit additional information or arguments concerning the matters raised by EPA and whether EPA should modify or revoke the approval of the TERA in accordance with paragraph (a)(2) of this section.

(4) EPA will consider the information and arguments in accordance with paragraph (a)(3) of this section.

(5) Following consideration of the information and arguments under paragraph (a)(3) of this section, if EPA notifies the submitter that the R&D activity must be suspended or terminted, the submitter may resume the activity only upon written notice from EPA that EPA has approved

resumption of the activity. In approving resumption of an activity, EPA may prescribe additional conditions which must be followed by the submitter.

(c) *Modifications*. If, after approval of a TERA under this subpart, the submitter concludes that it is necessary to alter the conduct of the research and development activity in a manner which would result in the activity being different from that described in the TERA agreement and any conditions EPA prescribed in its approval, the submitter must inform the EPA contact for the TERA and may not modify the activity without the approval of EPA.

Subpart F—Exemptions for Test Marketing

§ 725.300 Scope and purpose.

(a) This subpart describes exemptions from the reporting requirements under subpart D of this part for test marketing activities involving microorganisms.

(b) In lieu of complying with subpart D of this part, persons described in § 725.305 may submit an application for a test marketing exemption (TME).

(c) Submission requirements specific for TME applications are described at § 725.350.

(d) Data requirements for TME applications are set forth in § 725.355.

(e) EPA review procedures specific for TMEs are set forth in § 725.370.

(f) Subparts A through C of this part apply to any submission under this subpart.

§ 725.305 Persons who may apply under this subpart.

A person identified in this section may apply for a test marketing exemption. EPA may grant the exemption if the person demonstrates that the microorganism will not present an unreasonable risk of injury to health or the environment as a result of the test marketing. A person may apply under this subpart for the following test marketing activities:

(a) A person who intends to manufacture or import for commercial purposes a new microorganism.

(b) A person who intends to manufacture, import, or process for commercial purposes a microorganism identified in subpart M of this part for a significant new use.

§ 725.350 Procedural requirements for this subpart.

General requirements for all submissions under this part are contained in subparts A through C of this part. In addition, the following requirements apply to applications submitted under this subpart:

(a) *Prenotice consultation*. EPA strongly suggests that for a TME, the applicant contact EPA for a prenotice consultation regarding eligibility for a TME.

(b) *When to submit a TME application*. Each person who is eligible to apply for a TME under this subpart must submit the application at least 45 calendar days before the person intends to commence the test marketing activity.

(c) *Recordkeeping*. Each person who is granted a TME must comply with the recordkeeping requirements of § 725.65. In addition, any person who obtains a TME must retain documentation of compliance with any restrictions imposed by EPA when it grants the TME. This information must be retained for 3 years from the final date of manufacture or import under the exemption.

§ 725.355 Information to be included in the TME application.

(a) To review a TME application, EPA must have sufficient information to permit a reasoned evaluation of the health and environmental effects of the planned test marketing activity. The person seeking EPA approval must submit all information known to or reasonably ascertainable by the person on the microorganism and the test marketing activity, including information not listed in paragraphs (c), (d), and (e) of this section that the person believes will demonstrate that the microorganism will not present an unreasonable risk of injury to health or the environment as a result of the test marketing. The TME application must be in writing and must include at least the information described in paragraphs (b), (c), (d), and (e) of this section.

(b) When specific information is not submitted, an explanation of why such information is not available or not applicable must be included.

(c) Persons applying for a TME must submit the submitter identification and microorganism identity information required for MCANs in § 725.155(c), (d)(1), and (d)(2).

(d) Persons applying for a TME must submit phenotypic and ecological characteristics information required in § 725.155(d)(3) as it relates directly to the conditions of the proposed test marketing activity.

(e) Persons applying for a TME must also submit the following information about the proposed test marketing activity:

(1) *Proposed test marketing activity*. (i) The maximum quantity of the microorganism which the applicant will manufacture or import for test marketing.

(ii) The maximum number of persons who may be provided the microorganism during test marketing.

(iii) The maximum number of persons who may be exposed to the microorganism as a result of test marketing, including information regarding duration and route of such exposures.

(iv) A description of the test marketing activity, including its duration and how it can be distinguished from full-scale commercial production and research and development activities.

(2) *Health and environmental effects data*. All existing data regarding health and environmental effects of the microorganism must be reported in accordance with § 725.160.

§ 725.370 EPA review of the TME application.

General procedures for review of all submissions under this part are contained in §§ 725.28 through 725.60. In addition, the following procedures apply to EPA review of TME applications submitted under this subpart:

(a) No later than 45 days after EPA receives a TME, the Agency will either approve or deny the application.

(b) A submitter may only proceed with test marketing activities after receipt of EPA approval.

(c) In approving a TME application, EPA may impose any restrictions necessary to ensure that the microorganism will not present an unreasonable risk of injury to health and the environment as a result of test marketing.

Subpart G—General Exemptions for New Microorganisms

§ 725.400 Scope and purpose.

(a) This subpart describes exemptions from reporting under subpart D of this part, and from review under this part altogether, for manufacturing and importing of certain new microorganisms for commercial purposes.

(b) Recipient microorganisms eligible for the tiered exemption from review under this part are listed in § 725.420.

(c) Criteria for the introduced genetic material contained in the new microorganisms are described in § 725.421.

(d) Physical containment and control technologies are described in § 725.422.

(e) The conditions for the Tier I exemption are listed in § 725.424.

(f) In lieu of complying with subpart D of this part, persons using recipient microorganisms eligible for the tiered exemption may submit a Tier II

exemption request. The limited reporting requirements for the Tier II exemption, including data requirements, are described in §§ 725.450 and 725.455.

(g) EPA review procedures for the Tier II exemption are set forth in § 725.470.

(h) Subparts A through C of this part apply to any submission under this subpart.

§ 725.420 Recipient microorganisms.

The following recipient microorganisms are eligible for either exemption under this subpart:

(a) *Acetobacter aceti*.
(b) *Aspergillus niger*.
(c) *Aspergillus oryzae*.
(d) *Bacillus licheniformis*.
(e) *Bacillus subtilis*.
(f) *Clostridium acetobutylicum*.
(g) *Escherichia coli* K-12.
(h) *Penicillium roqueforti*.
(i) *Saccharomyces cerevisiae*.
(j) *Saccharomyces uvarum*.

§ 725.421 Introduced genetic material.

For a new microorganism to qualify for either exemption under this subpart, introduced genetic material must meet all of the criteria listed in this section.

(a) *Limited in size*. The introduced genetic material must consist only of the following:

(1) The structural gene(s) of interest.

(2) The regulatory sequences permitting the expression of solely the gene(s) of interest.

(3) Associated nucleotide sequences needed to move genetic material, including linkers, homopolymers, adaptors, transposons, insertion sequences, and restriction enzyme sites.

(4) The nucleotide sequences needed for vector transfer.

(5) The nucleotide sequences needed for vector maintenance.

(b) *Well-characterized*. For introduced genetic material, well-characterized means that the following have been determined:

(1) The function of all of the products expressed from the structural gene(s).

(2) The function of sequences that participate in the regulation of expression of the structural gene(s).

(3) The presence or absence of associated nucleotide sequences and their associated functions, where associated nucleotide sequences are those sequences needed to move genetic material including linkers, homopolymers, adaptors, transposons, insertion sequences, and restriction enzyme sites.

(c) *Poorly mobilizable*. The ability of the introduced genetic material to be transferred and mobilized is inactivated, with a resulting frequency of transfer of less than 10^{-8} transfer events per recipient.

(d) *Free of certain sequences*. (1) The introduced genetic material must not contain a functional portion of any of the toxin-encoding sequences described in this paragraph (d).

(i) For the purposes of this section, a functional portion of a toxin-encoding sequence means any sequence which codes for a polypeptide that has one of the following effects:

(A) It directly or indirectly contributes to toxic effects in humans. Directly contributes to toxic effects in humans means those sequences encoding polypeptides that have direct toxicity to target cells. An example of a sequence which directly contributes to toxic effects in humans is one which encodes the portion of diphtheria toxin, listed in paragraph (d)(2) of this section, capable of interacting with elongation factor 2, leading to inhibition of protein synthesis in target respiratory, heart, kidney, and nerve tissues. Indirectly contributes to toxic effects in humans means a sequence whose encoded polypeptide is not directly toxic to target cells, yet still adversely affects humans. An example of a sequence which indirectly contributes to toxic effects is the sequence which encodes the portion of the botulinum toxin, listed in paragraph (d)(3) of this section, capable of blocking the release of acetylcholine from gangliosides. Botulinum toxin affects neuromuscular junctions by its blockage of acetylcholine release, leading to irreversible relaxation of muscles and respiratory arrest.

(B) It binds a toxin or toxin precursor to target human cells.

(C) It facilitates intracellular transport of a toxin in target human cells.

(ii) While these toxins are listed (with synonyms in parentheses) in paragraphs (d)(2) through (d)(7) of this section according to the source organism, it is use of the nucleotide sequences that encode the toxins that is being restricted and not the use of the source organisms. The source organisms are listed to provide specificity in identification of sequences whose use is restricted. Although similar or identical sequences may be isolated from organisms other than those listed below in paragraphs (d)(2) through (d)(7) of this section, these comparable toxin sequences, regardless of the organism from which they are derived, must not be included in the introduced genetic material.

(2) *Sequences for protein synthesis inhibitor*.

Sequence Source	Toxin Name
Corynebacterium diphtheriae & C. ulcerans	Diphtheria toxin
Pseudomonas aeruginosa	Exotoxin A
Shigella dysenteriae	Shigella toxin (Shiga toxin, Shigella dysenteriae type I toxin, Vero cell toxin)
Abrus precatorius, seeds	Abrin
Ricinus communis, seeds	Ricin

(3) *Sequences for neurotoxins*.

Sequence Source	Toxin Name
Clostridium botulinum	Neurotoxins A, B, C1, D, E, F, G (Botulinum toxins, botulinal toxins)
Clostridium tetani	Tetanus toxin (tetanospasmin)
Proteus mirabilis	Neurotoxin
Staphylococcus aureus	Alpha toxin (alpha lysin)
Yersinia pestis	Murine toxin
Snake toxins	
Bungarus caeruleus	Caeruleotoxin
Bungarus multicinctus	Beta-bungarotoxin (phospholipase)
Crotalus spp.	Crotoxin (phospholipase)
Dendroaspis viridis	Neurotoxin
Naja naja varieties	Neurotoxin
Notechia scutatus	Notexin (phospholipase)
Oxyuranus scutellatus	Taipoxin
Invertebrate toxins	
Chironex fleckeri	Neurotoxin
Androctnus australis	Neurotoxin
Centruroides sculpturatus	Neurotoxin

(4) *Sequences for oxygen labile cytolysins*.

Sequence Source	Toxin Name
Bacillus alve	Alveolysin
Bacillus cereus	Cereolysin
Bacillus laterosporus	Laterosporolysin
Bacillus thuringiensis	Thuringiolysin
Clostridium bifermentans	Lysin
Clostridium botulinum	Lysin
Clostridium caproicum	Lysin
Clostridium chauvoei	Delta-toxin
Clostridium histolyticum	Epsilon-toxin
Clostridium novyi	Gamma-toxin
Clostridium oedematiens	Delta-toxin

Sequence Source	Toxin Name
Clostridium perfringens	Theta-toxin (Perfringolysin)
Clostridium septicum	Delta-toxin
Clostridium sordellii	Lysin
Clostridium tetani	Tetanolysin
Listeria monocytogenes	Listeriolysin (A B)
Streptococcus pneumoniae	Pneumolysin
Streptococcus pyogene	Streptolysin O (SLO)

(5) *Sequences for toxins affecting membrane function.*

Sequence Source	Toxin Name
Bacillus anthracis	Edema factor (Factors I II); Lethal factor (Factors II III)
Bacillus cereus	Enterotoxin (diarrheagenic toxin, mouse lethal factor)
Bordetella pertussis	Adenylate cyclase (Heat-labile factor); Pertussigen (pertussis toxin, islet activating factor, histamine sensitizing factor, lymphocytosis promoting factor)
Clostridium botulinum	C2 toxin
Clostridium difficile	Enterotoxin (toxin A)
Clostridium perfringens	Beta-toxin; Delta-toxin
Escherichia coli & other Enterobacteriaceae spp.	Heat-labile enterotoxins (LT); Heat-stable enterotoxins (STa, ST1 subtypes ST1a ST1b; also STb, STII)
Legionella pneumophila	Cytolysin
Vibrio cholerae & *Vibrio mimicus*	Cholera toxin (choleragen)

(6) Sequences that affect membrane integrity.

Sequence Source	Toxin Name
Clostridium bifermentans & other *Clostridium spp*	Lecithinase
Clostridium perfringens	Alpha-toxin (phospholipase C, lecithinase); Enterotoxin
Corynebacterium pyogenes & other Corynebacterium spp.	Cytolysin (phospholipase C), Ovis toxin (sphingomyelinase D)
Staphylococcus aureus	Beta-lysin (beta toxin)

(7) *Sequences that are general cytotoxins.*

Sequence Source	Toxin Name
Adenia digitata	Modeccin
Aeromonas hydrophila	Aerolysin (beta-lysin, cytotoxic lysin)
Clostridium difficile	Cytotoxin (toxin B)
Clostridium perfringens	Beta-toxin; Epsilon-toxin; Kappa-toxin
Escherichia coli & other Enterobacteriaceae spp.	Cytotoxin (Shiga-like toxin, Vero cell toxin)
Pseudomonas aeruginosa	Proteases
Staphylococcus aureus	Gamma lysin (Gamma toxin); Enterotoxins (SEA, SEB, SEC, SED SEE); Pyrogenic exotoxins A B; Toxic shock syndrome toxins (TSST-1)
Staphylococcus aureus & Pseudomonas aeruginosa	Leucocidin (leukocidin, cytotoxin)
Streptococcus pyogenes	Streptolysin S (SLS); Erythrogenic toxins (scarlet fever toxins, pyrogenic exotoxins)
Yersinia enterocolitica	Heat-stable enterotoxins (ST)

§ 725.422 Physical containment and control technologies.

The manufacturer must meet all of the following criteria for physical containment and control technologies for any facility in which the new microorganism will be used for a Tier I exemption; these criteria also serve as guidance for a Tier II exemption.

(a) Use a structure that is designed and operated to contain the new microorganism.

(b) Control access to the structure.

(c) Provide written, published, and implemented procedures for the safety of personnel and control of hygiene.

(d) Use inactivation procedures demonstrated and documented to be effective against the new microorganism contained in liquid and solid wastes prior to disposal of the wastes. The inactivation procedures must reduce viable microbial populations by at least 6 logs in liquid and solid wastes.

(e) Use features known to be effective in minimizing viable microbial populations in aerosols and exhaust gases released from the structure, and document use of such features.

(f) Use systems for controlling dissemination of the new microorganism through other routes, and document use of such features.

(g) Have in place emergency clean-up procedures.

§ 725.424 Requirements for the Tier I exemption.

(a) *Conditions of exemption.* The manufacture or import of a new microorganism for commercial purposes is not subject to review under this part if all of the following conditions are met for all activities involving the new microorganism:

(1) The recipient microorganism is listed in and meets any requirements specified in § 725.420.

(2) The introduced genetic material meets the criteria under § 725.421.

(3) The physical containment and control technologies of any facility in which the microorganism will be manufactured, processed, or used meet the criteria under § 725.422.

(4) The manufacturer or importer submits a certification described in paragraph (b) of this section to EPA at least 10 days before commencing initial manufacture or import of a new microorganism derived from a recipient microorganism listed in § 725.420.

(5) The manufacturer or importer complies with the recordkeeping requirements of § 725.65 and maintains records for the initial and subsequent uses of the new microorganism that verify compliance with the following:

(i) The certifications made in paragraph (b) of this section.

(ii) All the eligibility criteria for the Tier I exemption including the criteria for the recipient microorganism, the introduced genetic material, the physical containment and control technologies.

(b) *Certification.* To be eligible for the Tier I exemption under this subpart, the manufacturer or importer must submit to EPA a document signed by a responsible company official containing the information listed in this paragraph.

(1) Name and address of manufacturer or importer.

(2) Date when manufacture or import is expected to begin.

(3) The identification (genus, species) of the recipient microorganism listed in § 725.420 which is being used to create the new microorganism which will be used under the conditions of the Tier I exemption.

(4) Certification of the following:

(i) Compliance with the introduced genetic material criteria described in § 725.421.

(ii) Compliance with the containment requirements described in § 725.422, including the provision in paragraph (a)(3) of this section.

(5) The site of waste disposal and the type of permits for disposal, the permit numbers and the institutions issuing the permits.

(6) The certification statement required in § 725.25(b). Certification of submission of test data is not required for the Tier I exemption.

§ 725.426 Applicability of the Tier I exemption.

The Tier I exemption under § 725.424 applies only to a manufacturer or importer of a new microorganism that certifies that the microorganism will be used in all cases in compliance with §§ 725.420, 725.421, and 725.422.

§ 725.428 Requirements for the Tier II exemption.

The manufacturer or importer of a new microorganism for commercial purposes may submit to EPA a Tier II exemption request in lieu of a MCAN under subpart D of this part if all of the following conditions are met:

(a) The recipient microorganism is listed in and meets any requirements specified in § 725.420.

(b) The introduced genetic material meets the criteria under § 725.421.

(c) Adequate physical containment and control technologies are used. The criteria listed under § 725.422 for physical containment and control technologies of facilities should be used as guidance to satisfy the Tier II exemption request data requirements listed at § 725.455(d). EPA will review proposed process and containment procedures as part of the submission for a Tier II exemption under this section.

§ 725.450 Procedural requirements for the Tier II exemption.

General requirements for all submissions under this part are contained in § 725.25. In addition, the following requirements apply to requests submitted under this subpart:

(a) *Prenotice consultation*. EPA strongly suggests that for a Tier II exemption, the submitter contact the Agency for a prenotice consultation regarding eligibility for the exemption.

(b) *When to submit the Tier II exemption request*. Each person who is eligible to submit a Tier II exemption request under this subpart must submit the request at least 45 calendar days before the person intends to commence manufacture or import.

(c) *Contents of the Tier II exemption request*. Each person who submits a request under this subpart must provide the information described in §§ 725.428 and 725.455, as well as information known to or reasonably ascertainable by the person that would permit EPA to determine that use of the microorganism, under the conditions specified in the request, will not present an unreasonable risk of injury to health or the environment.

(d) *Recordkeeping*. Each person who submits a request under this subpart must comply with the recordkeeping requirements of § 725.65. In addition, the submitter should maintain records which contain information that verifies compliance with the following:

(1) The certifications made in the request.

(2) All the eligibility criteria for the Tier II exemption request including the criteria for the recipient microorganism, the introduced genetic material, the physical containment and control technologies.

§ 725.455 Information to be included in the Tier II exemption request.

The submitter must indicate clearly that the submission is a Tier II exemption request for a microorganism instead of the MCAN under subpart D of this part and must submit the following information:

(a) *Submitter identification*. (1) The name and headquarters address of the submitter.

(2) The name, address, and office telephone number (including area code) of the principal technical contact representing the submitter.

(b) *Microorganism identity information*. (1) Identification (genus, species, and strain) of the recipient microorganism. Genus, species designation should be substantiated by a letter from a culture collection or a brief summary of the results of tests conducted for taxonomic identification.

(2) Type of genetic modification and the function of the introduced genetic material.

(3) Site of insertion.

(4) Certification of compliance with the introduced genetic material criteria described in § 725.421.

(c) *Production volume*. Production volume, including total liters per year, and the maximum cell concentration achieved during the production process.

(d) *Process and containment information*. (1) A description of the process including the following:

(i) Identity and location of the manufacturing site(s).

(ii) Process flow diagram illustrating the production process, including downstream separations, and indicating the containment envelope around the appropriate equipment.

(iii) Identities and quantities of feedstocks.

(iv) Sources and quantities of potential releases to both the workplace and environment, and a description of engineering controls, inactivation procedures, and other measures which will reduce worker exposure and environmental releases.

(v) A description of procedures which will be undertaken to prevent fugitive emissions, i.e. leak detection and repair program.

(vi) A description of procedures/safeguards to prevent and mitigate accidental releases to the workplace and the environment.

(2) Certification of those elements of the containment criteria described in § 725.422 with which the manufacturer is in compliance, including stating by number the elements with which the manufacturer is in full compliance.

(e) The site of waste disposal and the type of permits for disposal, the permit numbers and the institutions issuing the permits.

(f) The certification statement required in § 725.25(b). Certification of submission of test data is not required for the Tier II exemption.

§ 725.470 EPA review of the Tier II exemption request.

General procedures for review of all submissions under this part are contained in §§ 725.28 through 725.60. In addition, the following procedures apply to EPA review of Tier II exemption requests submitted under this subpart:

(a) *Length of the review period*. The review period for the request will be 45 days from the date the Document Control Officer for the Office of Pollution Prevention and Toxics receives a complete request, or the date EPA determines the request is complete under § 725.33, unless the Agency extends the review period for good cause under § 725.56.

(b) *Criteria for review*. EPA will review the request to determine that the new microorganism complies with § 725.428 and that its manufacture, processing, use, and disposal as described in the request will not present an unreasonable risk of injury to health or the environment.

(c) *EPA decision regarding the Tier II exemption request*. A decision concerning a request under this subpart will be made by the Administrator, or a designee.

(d) *Determination that the microorganism is ineligible for a Tier II review*. (1) EPA may determine that the manufacturer or importer is not eligible for Tier II review, because the microorganism does not meet the criteria under § 725.428 or the

Administrator, or a designee, decides that there is insufficient information to determine that the conditions of manufacture, processing, use, or disposal of the microorganism as described in the request will not present an unreasonable risk to health or the environment.

(2) If the Agency makes this determination, the Administrator, or a designee will notify the manufacturer or importer by telephone, followed by a letter, that the request has been denied. The letter will explain reasons for the denial.

(3) If the request is denied, the manufacturer or importer may submit the information necessary to constitute a MCAN under subpart D of this part.

(e) *Approval or denial of the Tier II exemption request.* (1) No later than 45 days after EPA receives a request, the Agency will either approve or deny the request.

(2) In approving a request, EPA may impose any restrictions necessary to ensure that the microorganism will not present an unreasonable risk of injury to health and the environment as a result of general commercial use.

(f) EPA may seek to enjoin the manufacture or import of a microorganism in violation of this subpart, or act to seize any microorganism manufactured or imported in violation of this section or take other actions under the authority of sections 7 or 17 of the Act.

(g) A manufacturer or importer may only proceed after receipt of EPA approval.

Subparts H–K—[Reserved]

Subpart L—Additional Procedures for Reporting on Significant New Uses of Microorganisms

§ 725.900 Scope and purpose.

(a) This subpart describes additional provisions governing submission of MCANs for microorganisms subject to significant new use rules identified in subpart M of this part.

(b) Manufacturers, importers, and processors described in § 725.105(c) must submit a MCAN under subpart D of this part for significant new uses of microorganisms described in subpart M of this part, unless they are excluded under §§ 725.910 or 725.912.

(c) Section 725.920 discusses exports and imports.

(d) Additional recordkeeping requirements specific to significant new uses of microorganisms are described in § 725.950.

(e) Section 725.975 describes how EPA will approve alternative means of complying with significant new use requirements designated in subpart M of this part.

(f) Expedited procedures for promulgating significant new use requirements under subpart M of this part for microorganisms subject to section 5(e) orders are discussed in §§ 725.980 and 725.984.

(g) This subpart L contains provisions governing submission and review of notices for the microorganisms and significant new uses identified in subpart M of this part. The provisions of this subpart L apply to the microorganisms and significant new uses identified in subpart M of this part, except to the extent that they are specifically modified or supplanted by specific requirements in subpart M of this part. In the event of a conflict between the provisions of this subpart L and the provisions of subpart M of this part, the provisions of subpart M of this part shall govern.

(h) The provisions of subparts A through F of this part also apply to subparts L and M of this part. For purposes of subparts L and M of this part, wherever the words ''microorganism'' or ''new microorganism'' appear in subparts A through F of this part, it shall mean the microorganism subject to subparts L and M of this part. In the event of a conflict between the provisions of subparts A through F and the provisions of subparts L and M of this part, the provisions of subparts L and M of this part shall govern.

§ 725.910 Persons excluded from reporting significant new uses.

(a) A person who intends to manufacture, import, or process a microorganism identified in subpart M of this part and who intends to distribute it in commerce is not required to submit a MCAN under subpart D of this part, if that person can document one or more of the following as to each recipient of the microorganism from that person:

(1) That the person has notified the recipient, in writing, of the specific section in subpart M of this part which identifies the microorganism and its designated significant new uses, or

(2) That the recipient has knowledge of the specific section in subpart M of this part which identifies the microorganism and its designated significant new uses, or

(3) That the recipient cannot undertake any significant new use described in the specific section in subpart M of this part.

(b) The manufacturer, importer, or processor described in paragraph (a) of this section must submit a MCAN under subpart D of this part, if such person has knowledge at the time of commercial distribution of the microorganism identified in the specific section in subpart M of this part that a recipient intends to engage in a designated significant new use of that microorganism without submitting a MCAN under this part.

(c) A person who processes a microorganism identified in a specific section in subpart M of this part for a significant new use of that microorganism is not required to submit a MCAN if that person can document each of the following:

(1) That the person does not know the specific microorganism identity of the microorganism being processed, and

(2) That the person is processing the microorganism without knowledge that the microorganism is identified in subpart M of this part.

(d)(1) If at any time after commencing distribution in commerce of a microorganism identified in a specific section in subpart M of this part, a person who manufactures, imports, or processes a microorganism described in subpart M of this part and distributes it in commerce has knowledge that a recipient of the microorganism is engaging in a significant new use of that microorganism designated in that section without submitting a MCAN under this part, the person is required to cease supplying the microorganism to that recipient and to submit a MCAN for that microorganism and significant new use, unless the person is able to document each of the following:

(i) That the person has notified the recipient and EPA enforcement authorities (at the address in paragraph (d)(1)(iii) of this section), in writing within 15 working days of the time the person develops knowledge that the recipient is engaging in a significant new use, that the recipient is engaging in a significant new use without submitting a MCAN.

(ii) That, within 15 working days of notifying the recipient as described in paragraph (d)(1)(i) of this section, the person received from the recipient, in writing, a statement of assurance that the recipient is aware of the terms of the applicable section in subpart M of this part and will not engage in the significant new use.

(iii) That the person has promptly provided EPA enforcement authorities with a copy of the recipient's statement of assurance described in paragraph (d)(1)(ii) of this section. The copy must be sent to the Director, Office of Compliance (2221A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(2) If EPA notifies the manufacturer, importer, or processor that the recipient is engaging in a significant new use after providing the statement of assurance described in paragraph (d)(1)(ii) of this section and without submitting a MCAN under this part, the manufacturer, importer, or processor shall immediately cease distribution to that recipient until the manufacturer, importer, or processor or the recipient has submitted a MCAN under this part and the MCAN review period has ended.

(3) If, after receiving a statement of assurance from a recipient under paragraph (d)(1)(ii) of this section, a manufacturer, importer, or processor has knowledge that the recipient is engaging in a significant new use without submitting a MCAN under this part, the manufacturer, importer, or processor must immediately cease distributing the microorganism to that recipient and notify EPA enforcement authorities at the address identified in paragraph (d)(1)(iii) of this section. The manufacturer, importer, or processor may not resume distribution to that recipient until any one of the following has occurred:

(i) The manufacturer, importer, or processor has submitted a MCAN under this part and the MCAN review period has ended.

(ii) The recipient has submitted a MCAN under this part and the MCAN review period has ended.

(iii) The manufacturer, importer, or processor has received notice from EPA enforcement authorities that it may resume distribution to that recipient.

§ 725.912 Exemptions.

Persons identified in § 725.105(c) are not required to submit a MCAN under subpart D of this part for a microorganism identified in subpart M of this part, unless otherwise specified in a specific section in subpart M, if:

(a) The person submits a MCAN for the microorganism prior to the promulgation date of the section in subpart M of this part which identifies the microorganism, and the person receives written notification of compliance from EPA prior to the effective date of such section. The MCAN submitter must comply with any applicable requirement of section 5(b) of the Act. The MCAN must include the information and test data specified in section 5(d)(1) of the Act. For purposes of this exemption, the specific section in subpart M of this part which identifies the microorganism and §§ 725.3, 725.15, 725.65, 725.70, 725.75, 725.100, and 725.900 apply; after the effective date of the section in subpart M of this part which identifies the microorganism, §§ 725.105 and 725.910 apply and § 725.920 continues to apply. EPA will provide the MCAN submitter with written notification of compliance only if one of the following occurs:

(1) EPA is unable to make the finding that the activities described in the MCAN will or may present an unreasonable risk of injury to health or the environment under reasonably foreseeable circumstances, or

(2) EPA and the person negotiate a consent order under section 5(e) of the Act, such order to take effect on the effective date of the section in subpart M of this part which identifies the microorganism.

(b) The person is operating under the terms of a consent order issued under section 5(e) of the Act applicable to that person. If a provision of such section 5(e) order is inconsistent with a specific significant new use identified in subpart M of this part, abiding by the provision of the section 5(e) order exempts the person from submitting a MCAN for that specific significant new use.

§ 725.920 Exports and imports.

(a) *Exports*. Persons who intend to export a microorganism identified in subpart M of this part, or in any proposed rule which would amend subpart M of this part, are subject to the export notification provisions of section 12(b) of the Act. The regulations that interpret section 12(b) appear at part 707 of this chapter.

(b) *Imports*. Persons who import a substance identified in a specific section in subpart M of this part are subject to the import certification requirements under section 13 of the Act, which are codified at 19 CFR §§ 12.118 through 12.127 and 127.28(i). The EPA policy in support of the import certification requirements appears at part 707 of this chapter.

§ 725.950 Additional recordkeeping requirements.

Persons submitting a MCAN for a significant new use of a microorganism must comply with the recordkeeping requirements of § 725.65. In addition, the following requirements apply:

(a) At the time EPA adds a microorganism to subpart M of this part, EPA may specify appropriate recordkeeping requirements. Each manufacturer, importer, and processor of the microorganism shall maintain the records for 3 years from the date of their creation.

(b) The records required to be maintained under this section may include the following:

(1) Records documenting the information contained in the MCAN submitted to EPA.

(2) Records documenting the manufacture and importation volume of the microorganism and the corresponding dates of manufacture and import.

(3) Records documenting volumes of the microorganism purchased domestically by processors of the microorganism, names and addresses of suppliers and corresponding dates of purchase.

(4) Records documenting the names and addresses (including shipment destination address, if different) of all persons outside the site of manufacture or import to whom the manufacturer, importer, or processor directly sells or transfers the microorganism, the date of each sale or transfer, and the quantity of the microorganism sold or transferred on such date.

§ 725.975 EPA approval of alternative control measures.

(a) In certain sections of subpart M of this part, significant new uses for the identified microorganisms are described as the failure to establish and implement programs providing for the use of either: specific measures to control worker exposure to or release of microorganisms which are identified in such sections, or alternative measures to control worker exposure or environmental release which EPA has determined provide substantially the same degree of protection as the specified control measures. Persons who manufacture, import, or process a microorganism identified in such sections and who intend to employ alternative measures to control worker exposure or environmental release must submit a request to EPA for a determination of equivalency before commencing manufacture, import, or processing involving the alternative control measures.

(b) A request for a determination of equivalency must be submitted in writing to the Office of Pollution Prevention and Toxics, Document Control Officer, 7407, 401 M St., SW., Washington, DC 20460: ATTN: SNUR Equivalency Determination, and must contain:

(1) The name of the submitter.

(2) The specific identity of the microorganism.

(3) The citation for the specific section in subpart M of this part which pertains to the microorganism for which the request is being submitted.

(4) A detailed description of the activities involved.

(5) The specifications of the alternative worker exposure control measures or environmental release control measures.

(6) A detailed analysis explaining why such alternative control measures provide substantially the same degree of protection as the specific control measures identified in the specific section in subpart M of this part which pertains to the microorganism for which the request is being submitted.

(7) The data and information described in §§ 725.155 and 725.160. If such data and information have already been submitted to EPA's Office of Pollution Prevention and Toxics, the submitter need only document that it was previously submitted, to whom, and the date it was submitted.

(c) Requests for determinations of equivalency will be reviewed by EPA within 45 days. Determinations under this paragraph will be made by the Director, or a designee. Notice of the results of such determinations will be mailed to the submitter.

(d) If EPA notifies the submitter under paragraph (c) of this section that EPA has determined that the alternative control measures provide substantially the same degree of protection as the specified control measures identified in the specific section of subpart M of this part which pertains to the microorganism for which the request is being submitted, the submitter may commence manufacture, import, or processing in accordance with the specifications for alternative worker exposure control measures or environmental release control measures identified in the submitter's request, and may alter any corresponding notification to workers to reflect such alternative controls. Deviations from the activities described in the EPA notification constitute a significant new use and are subject to the requirements of this part.

§ 725.980 Expedited procedures for issuing significant new use rules for microorganisms subject to section 5(e) orders.

(a) *Selection of microorganisms.* (1) In accordance with the expedited process specified in this section, EPA will issue significant new use notification requirements for each new microorganism that, after MCAN review under subpart D of this part, becomes subject to a final order issued under section 5(e) of the Act, except for an order that prohibits manufacture and import of the microorganism, unless EPA determines that significant new use notification requirements are not needed for the microorganism.

(2) If EPA determines that significant new use notifications requirements are not needed for a microorganism that is subject to a final order issued under section 5(e) of the Act, EPA will issue a notice in the **Federal Register** explaining why the significant new use requirements are not needed.

(b) *Designation of requirements.* (1) The significant new use notification and other specific requirements will be based on and be consistent with the provisions included in the final order issued for the microorganism under section 5(e) of the Act. EPA may also designate additional activities as significant new uses which will be subject to notification.

(2) Significant new use requirements and other specific requirements designated under this section will be listed in subpart M of this part. For each microorganism, subpart M of this part will identify:

(i) The microorganism name.

(ii) The activities designated as significant new uses.

(iii) Other specific requirements applicable to the microorganism, including recordkeeping requirements or any other requirements included in the final section 5(e) order.

(c) *Procedures for issuing significant new use rules.* (1) *Possible processes.* EPA will issue significant new use rules (SNURs) under this section by one of the following three processes: direct final rulemaking, interim final rulemaking, or notice and comment rulemaking. EPA will use the direct final rulemaking process to issue significant new use rules unless it determines that, in a particular case, one of the other processes is more appropriate.

(2) *Notice in the* **Federal Register**. **Federal Register** documents issued to propose or establish significant new uses under this section will contain the following:

(i) The microorganism identity or, if its specific identity is claimed confidential, an appropriate generic microorganism name and an accession number assigned by EPA.

(ii) The MCAN number.

(iii) A summary of EPA's findings under section 5(e)(1)(A) of the Act for the final order issued under section 5(e).

(iv) Designation of the significant new uses subject to, or proposed to be subject to, notification and any other applicable requirements.

(v) Any modification of subpart L of this part applicable to the specific microorganism and significant new uses.

(vi) If the **Federal Register** document establishes a final rule, or notifies the public that a final rule will not be issued after public comment has been received, the document will describe comments received and EPA's response.

(3) *Direct final rulemaking.* (i) EPA will use direct final rulemaking to issue a significant new use rule, when specific requirements will be based on and be consistent with the provisions included in the final order issued for the microorganism under section 5(e) of the Act. EPA will issue a final rule in the **Federal Register** following its decision to develop a significant new use rule under this section for a specific new microorganism.

(ii) The **Federal Register** document will state that, unless written notice is received by EPA within 30 days of publication that someone wishes to submit adverse or critical comments, the rule will be effective 60 days from the date of publication. The written notice of intent to submit adverse or critical comments should state which SNUR(s) will be the subject of the adverse or critical comments, if several SNURs are established through the direct final rule. If notice is received within 30 days that someone wishes to submit adverse or critical comments, the section(s) of the direct final rule containing the SNUR(s) for which a notice of intent to comment was received will be withdrawn by EPA issuing a document in the final rule section of the **Federal Register**, and a proposal will be published in the proposed rule section of the **Federal Register**. The proposal will establish a 30–day comment period.

(iii) If EPA, having considered any timely comments submitted in response to the proposal, decides to establish notification requirements under this section, EPA will issue a final rule adding the microorganism to subpart M of this part and designating the significant new uses subject to notification.

(4) *Interim final rulemaking.* (i) EPA will use the interim final rulemaking procedure to issue a significant new use rule, when specific requirements will be based on and be consistent with the provisions included in the final order issued for the microorganism under section 5(e) of the Act. The Agency will issue an interim final rule in the **Federal Register** following its decision to develop a significant new use rule for a specific new microorganism. The document will state EPA's reasons for using the interim final rulemaking procedure.

(A) The significant new use rule will take effect on the date of publication.

(B) Persons will be given 30 days from the date of publication to submit comments.

(ii) Interim final rules issued under this section shall cease to be in effect 180 days after publication unless, within the 180–day period, EPA issues a final rule in the **Federal Register** responding to any written comments received during the 30–day comment period specified in paragraph (c)(4)(i)(B) of this section and promulgating final significant new use notification requirements and other requirements for the microorganism.

(5) *Notice and comment rulemaking.* (i) EPA will use a notice and comment procedure to issue a significant new use rule, when EPA is designating additional activities which are not provisions included in the final order issued for the microorganism under section 5(e) of the Act as significant new uses which will be subject to notification. EPA will issue a proposal in the **Federal Register** following its decision to develop a significant new use rule under this section for a specific new microorganism. Persons will be given 30 days to comment on whether EPA should establish notification requirements for the microorganism under this part.

(ii) If EPA, having considered any timely comments, decides to establish notification requirements under this section, EPA will issue a final rule adding the microorganism to subpart M of this part and designating the significant new uses subject to notification.

(d) *Schedule for issuing significant new use rules.* (1) Unless EPA determines that a significant new use rule should not be issued under this section, EPA will issue a proposed rule, a direct final rule, or an interim final rule within 180 days of receipt of a valid notice of commencement under § 725.190.

(2) If EPA receives adverse or critical significant comments following publication of a proposed or interim final rule, EPA will either withdraw the rule or issue a final rule addressing the comments received.

§ 725.984 Modification or revocation of certain notification requirements.

(a) *Criteria for modification or revocation.* EPA may at any time modify or revoke significant new use notification requirements for a microorganism which has been added to subpart M of this part using the procedures of § 725.980. Such action may be taken under this section if EPA makes one of the following determinations, unless other information shows that the requirements should be retained:

(1) Test data or other information obtained by EPA provide a reasonable basis for concluding that activities designated as significant new uses of the microorganism will not present an unreasonable risk of injury to health or the environment.

(2) EPA has promulgated a rule under section 4 or 6 of the Act, or EPA or another agency has taken action under another law, for the microorganism that eliminates the need for significant new use notification under section 5(a)(2) of the Act.

(3) EPA has received MCANs for some or all of the activities designated as significant new uses of the microorganism and, after reviewing such MCANs, concluded that there is no need to require additional notice from persons who propose to engage in identical or similar activities.

(4) EPA has examined new information, or has reexamined the test data or other information supporting its finding under section 5(e)(1)(A)(ii)(I) of the Act and has concluded that a rational basis no longer exists for the findings that activities involving the microorganism may present an unreasonable risk of injury to health or the environment required under section 5(e)(1)(A) of the Act.

(5) Certain activities involving the microorganism have been designated as significant new uses pending the completion of testing, and adequate test data developed in accordance with applicable procedures and criteria have been submitted to EPA.

(b) *Procedures for limitation or revocation.* Modification or revocation of significant new use notification requirements for a microorganism that has been added to subpart M of this part using the procedures described in § 725.980 may occur either at EPA's initiative or in response to a written request.

(1) Any affected person may request modification or revocation of significant new use notification requirements for a microorganism that has been added to subpart M of this part using the procedures described in § 725.980 by writing to the Director, or a designee, and stating the basis for such request. The request must be accompanied by information sufficient to support the request. All requests should be sent to the TSCA Document Processing Center (7407), Room L–100, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Request to amend SNUR.

(2) The Director, or a designee, will consider the request, make a determination whether to initiate rulemaking to modify the requirements, and notify the requester of that determination by certified letter. If the request is denied, the letter will explain why EPA has concluded that the significant new use notification requirements for that microorganism should remain in effect.

(3) If EPA concludes that significant new use notification requirements for a microorganism should be limited or revoked, EPA will propose the changes in a notice in the **Federal Register**, briefly describe the grounds for the action, and provide interested parties an opportunity to comment.

Subpart M—Significant New Uses for Specific Microorganisms

§ 725.1000 Scope.

This subpart identifies uses of microorganisms which EPA has determined to be significant new uses under the authority of section 5(a)(2) of the Toxic Substances Control Act.

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Friday
April 11, 1997

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 11, et al.
Federal Acquisition Regulation; Liquidated Damages; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11, 19, 52, and 53

[FAR Case 97–300]

RIN 9000–AH53

Federal Acquisition Regulation; Liquidated Damages

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations (DAR) Council are proposing to amend the Federal Acquisition Regulation (FAR) to clarify policy on liquidated damages and commercial subcontracting plans and to implement OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. Comments received under the existing interim rule FAR case 89–042, Liquidated Damages, will be addressed under this new FAR case 97–300. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before June 10, 1997 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: 97–300@www.arnet.gov. Please cite FAR case 97–300 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 97–300.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule, under FAR case 89–042, was published on July 21, 1989 (54 FR 30708), to require a prime contractor to pay liquidated damages upon a finding of lack of good faith efforts to meet its small business subcontracting goals. This rule implements Section 304 of the Business Opportunity Development Reform Act of 1988, Public Law 100–656.

Significant revisions to the interim rule were proposed based on analysis of public comments. Extensive discussions took place regarding long-standing problems of trying to extend and adapt the requirement of Section 8(d) of the Small Business Act to contracts for commercial products, now compounded by the introduction of liquidated damages. To resolve those problems, the case has been held pending release and conformance to Federal Acquisition Circular (FAC) 90–32, published on September 18, 1995 (60 FR 48231), FAR case 94–790, ''Acquisition of Commercial Items'', and OFPP Policy Letter 95–1, ''Subcontracting Plans for Companies Supplying Commercial Items''.

On January 17, 1997, the CAAC and the DAR Council agreed to close FAR case 89–042, Liquidated Damages, into new FAR case 97–300. All of the issues raised, and public comments submitted, in response to the interim rule published under FAR case 89–042, will be addressed under the new FAR case 97–300.

B. Regulatory Flexibility Act

This proposed rule is not expected to 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.*, because the proposed changes clarify policy on liquidated damages and commercial subcontracting plans and the changes are not expected to increase or decrease small business awards, and because small businesses are exempt from subcontracting plan requirements per FAR 19.702(b). An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–300), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) is deemed to apply because FAR case 97–300, in part, adds additional requirements that the subcontracting plan shall include. Therefore, a request for approval of a revised burden estimate for OMB clearance 9000–0006 has been submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a **Federal Register** notice.

List of Subjects in 48 CFR Parts 11, 19, 52, and 53

Government procurement.

Dated: April 2, 1997.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 11, 19, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 11, 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Section 11.501 is revised to read as follows:

11.501 General.

This subpart provides policies and procedures for the use of liquidated damages clauses in solicitations and contracts for supplies, services, and construction, except for the Liquidated Damages—Subcontracting Plan Clause at 52.219–16, which may be applied pursuant to 19.705–7.

PART 19—SMALL BUSINESS PROGRAMS

3. Section 19.701 is amended by adding, in alphabetical order, definitions for ''Commercial plan'', ''Individual contract plan'' and ''Master plan'' to read as follows:

19.701 Definitions.

Commercial plan, as used in this subpart, means a subcontracting plan that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

* * * * *

Individual contract plan, as used in this subpart, means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan, as used in this subpart, means a subcontracting plan that

contains all of the required elements of the individual plans, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

* * * * *

4. Section 19.702 is amended by revising paragraph (a) introductory text and (b)(4) to read as follows:

19.702 Statutory requirements.

* * * * *

(a) Except as stated in paragraph (b) of this section, Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans.

* * * * *

(b) * * *

(4) For in scope modifications to contracts that do not contain the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior Defense Acquisition Regulation, Federal Procurement Regulations, or National Aeronautics and Space Administration clauses); *e.g.*, contracts awarded before Public Law 95–507.

* * * * *

5. Section 19.703(b) is amended by revising the first sentence to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as either a small business concern, a small disadvantaged business concern or a women-owned small business concern. * * *

6. Section 19.704 is amended—(a) By redesignating paragraphs (a)(2) through (a)(6) as (a)(7) through (a)(11), respectively;

(b) By adding new paragraphs (a)(2) through (a)(6) and (d);

(c) In newly-designated (a)(8) by removing the word ''will'' the second time it appears, and

(d) By revising newly-designated paragraphs (a) (10) and (11) and paragraphs (b) in the first sentence and (c). The revised and added text reads as follows:

19.704 Subcontracting plan requirements.

* * * * *

(a) * * *

(2) A statement of total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small, small disadvantaged and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of the types planned for subcontracting to small, small disadvantaged and women-owned small business concerns;

(4) A description of the methods used to develop the subcontracting goals;

(5) A description of the methods used to identify potential sources for solicitation purposes;

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small, small disadvantaged and women-owned small business concerns;

* * * * *

(10) Assurances that the offeror will

(i) Cooperate in any studies or surveys as may be required,

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan, and

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and

(iv) Ensure that its subcontractors agree to submit SF's 294 and 295;

(11) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant- or division-wide basis, a master plan (see 19.701) which contains all the elements required by the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, except goals.

* * *

(c) For multiyear contracts or contracts containing options, the cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary (see 19.705–2(a)). If a plan is necessary and the offeror is submitting an individual contract plan, the plan shall contain all the elements required by 19.704(a) and shall contain separate statements and goals for the basic contract and for each option.

(d) A commercial plan (as defined in 19.701) is the preferred type of subcontracting plan for contractors furnishing commercial items. The contractor shall:

(1) Submit the commercial plan to either

(i) The first contracting officer awarding a contract subject to the plan during the offeror's fiscal year, or

(ii) If the offeror has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer shall negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the offeror's fiscal year for all Government contracts in effect during the period.

(2) Submit a new commercial plan, 30 days before the end of the fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan. Once the new commercial plan is approved, the contractor shall provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan.

7. Section 19.705–4 is amended—

(a) In the first sentence of paragraphs (b) and (c) by removing ''six'' and inserting ''eleven'' in its place,

(b) Paragraph (b) is further amended in the second sentence by removing ''six'';

(c) Paragraph (c) is further amended by revising the third sentence and by adding a sentence between the second and third sentences;

(d) By revising paragraph (d)(1); and

(e) By redesignating paragraphs (d)(3) through (d)(6) as (d)(4) through (d)(7), respectively, adding a new paragraph (d)(3); and revising newly-designated (d)(5). The new and revised text reads as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(c) * * * The contracting officer shall take particular care to ensure that the offeror has not submitted unreasonably low goals in order to minimize exposure to liquidated damages and to avoid the administrative burden of substantiating good faith efforts. Additionally, particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort.

* * *

(d) * * *

(1) Obtain information available from the cognizant administrative contracting

office, as provided for in 19.706(a), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged and women-owned small business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance and consider the performance of other contractors on similar efforts.

* * * * *

(3) Ensure that the subcontracting goals are consistent with the offeror's cost and pricing data.

* * * * *

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small, small disadvantaged and women-owned small business concerns in the geographical area where the work will be performed.

* * * * *

8. Section 19.705–6 is amended by revising the introductory text and paragraphs (b) and (g) to read as follows:

19.705–6 Postaward responsibilities of the contracting officer.

After a contract or contract modification containing a subcontracting plan is awarded, the contracting officer who approved the plan is responsible for the following:

* * * * *

(b) Forwarding a copy of each commercial plan and any associated approvals to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contractor's headquarters is located.

* * * * *

(g) Taking action to enforce the terms of the contract upon receipt of a notice under 19.706(f).

9. Section 19.705–7 is amended by revising paragraphs (b), (c), and (f) and the last sentence of paragraph (d); and by adding (h) to read as follows:

19.705–7 Liquidated damages.

* * * * *

(b) The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal.

(c) If, at completion of the basic contract or any option, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, a contractor has failed to meet its subcontracting goals, the contracting officer shall review all available information for an indication that the contractor has not made a good faith effort to comply with the plan. If no such indication is found, the contracting officer shall document the file accordingly. If the contracting officer decides in accordance with paragraph (d) of this subsection that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice specifying the failure, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 15 working days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision, and shall further state that failure of the contractor to respond may be taken as an admission that no valid explanation exists.

(d) * * * However, when considered in the context of the contractor's total effort in accordance with its plan, the following, though not all inclusive, may be considered as indicators of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small, small disadvantaged or women-owned small business concerns; a failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan; a failure to submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and Standard Form (SF) 295, Summary Subcontract Report, in accordance with instructions on the forms or as provided in agency regulations; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; and the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan.

* * * * *

(f) With respect to commercial plans approved under the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the contracting officer that approved the plan shall—

(1) Perform the functions of the contracting officer under this subsection on behalf of all agencies with contracts covered by the commercial plan;

(2) Determine whether or not the goals in the commercial plan were achieved and, if they were not achieved, review all available information for an indication that the contractor has not made a good faith effort to comply with the plan, document the results of the review, and provide a copy to the other contracting officers with contracts subject to the commercial plan as listed in the *Remarks* block of the SF 295; and

(3) If a determination is made to assess liquidated damages, request other contracting officers with contracts incorporating the plan to provide the amount of payments made under their Government contracts subject to the plan that contributed to the contractor's total sales during the contractor's fiscal year in order to calculate and assess liquidated damages on the Government's behalf. For example: The contractor's total sales are $50 million and the subcontracting dollars to support the sales are $20 million, or 40 percent. The Government's payments under contracts subject to the plan contributing to the contractor's total sales are $5 million. Therefore, the pro rata share of subcontracting attributable to the Government contracts covered by the plan is 10 percent of $20 million, or $2 million. If the contractor failed to achieve its small business goal by 1 percent, the liquidated damages would be calculated as 1 percent of $2 million. A copy of the contracting officer's final decision assessing liquidated damages shall be provided to other contracting officers with contracts subject to the commercial plan as listed in the *Remarks* block of the SF 295.

* * * * *

(h) Every contracting officer with a contract that is subject to a commercial plan shall include in the contract file—

(1) A copy of the approved plan,

(2) A copy of the determination regarding goal achievement and (if applicable) whether the contractor made a good faith effort to comply with the plan, and

(3) A copy of the final decision assessing liquidating damages, if applicable.

10. Section 19.706 is amended in paragraph (a) by removing the paragraph designation ''(a)''; by removing paragraph (b); by redesignating (a)(1) through (a)(6) as (a) through (f), respectively; in newly-designated (e) by removing ''and'' at the end; in newly-designated (f) by removing the period at the end and inserting ''; and'' in its place; and by adding (g) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

* * * * *

(g) Immediate notice that performance under a contract is complete, that the goals were or were not met, and if not met, whether there is any indication of

a lack of a good faith effort to comply with the subcontracting plan.

19.708 [Amended]

11. Section 19.708 is amended in paragraph (b)(2) by adding ''the clause with'' after the words ''Plan, or''; in the parenthetical citation in (c)(1) by removing ''(a)(1)''; and in the second sentence of (c)(2) by removing ''award fee'' and inserting ''award-fee'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.219–9 is amended by revising the clause date and paragraphs (b), (d)(2)(i), (d)(10), (d)(11) first sentence of introductory text, (d)(11)(vi) second sentence, (f) introductory text, and (g) to read as follows:

52.219–9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (XXX 1997)

* * * * *

(b) *Definitions.* As used in this clause—

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Commercial plan means a subcontracting plan that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all of the required elements of the individual plans, except goals, and may be incorporated into individual plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

* * * * *

(d) * * *

(2) * * *

(i) Total dollars planned to be subcontracted for individual plans; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for commercial plans;

* * * * *

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan, and (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, following the instructions on the forms or as provided in agency regulations; and (iv) ensure that its subcontractors agree to submit SF's 294 and 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and to award subcontracts to them. * * *

* * * * *

(vi) * * * Contractors having commercial plans need not comply with this requirement.

* * * * *

(f) A master plan on a plant or division-wide basis which contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided, * * *

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items (see paragraph (b) of this clause). The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract.

* * * * *

(End of clause)

* * * * *

13. Section 52.219–16 is amended—

(a) By revising the clause date;

(b) In the first sentence of paragraph (b) by removing the word ''product''; by adding a sentence at the beginning of (b); and by revising the last sentence;

(c) In (c) at the end of the first sentence, before the period, by adding ''and to discuss the matter''; and

(d) By revising (d) to read as follows:

52.219–16 Liquidated Damages—Subcontracting Plan.

* * * * *

LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (XXX 1997)

* * * * *

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. * * * The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

* * * * *

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

* * * * *

(End of clause)

PART 53—FORMS

14. Section 53.301–294 is revised to read as follows:

BILLING CODE 6820–EP–P

53.301–294 Standard Form 294, Subcontracting Report for Individual Contracts

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE
2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED
4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:
☐ MAR 31 ☐ SEPT 30 YEAR
5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ GSA ☐ NASA
☐ NAVY ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*
☐ AIR FORCE ☐ DEFENSE LOGISTICS AGENCY

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*
☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER
☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT
a. AGENCY'S OR CONTRACTOR'S NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:
☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*				
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				

13. REMARKS

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN
14b. TELEPHONE NUMBER — AREA CODE | NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV.)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. **This report is not required from small businesses.**

2. This report is not required for commercial items for which a company-wide annual plan (i.e., **a Commercial Plan**) has been approved, nor from large businesses in the Department of Defense (DOD) **Test Program for Negotiation of Comprehensive Subcontracting Plans.** The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. **A separate report is required for each contract at contract completion.** Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. **Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.**

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. **Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.**

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. **Credit cannot be taken for awards made to lower tier subcontractors.**

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. **A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7.** A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. **To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.**

BLOCKS 10a through 12: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and WOSB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) **Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4.** In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. **For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.**

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. **Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).**

BLOCK 11: Report all subcontracts awarded to SDBs **(including women-owned SDBs).** For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms **(including SDBs owned by women).**

BLOCK 13: Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.

2. Commercial plan means a subcontracting plan that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. **It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.**

15. Section 53.301–295 is revised to read as follows:

53.301–295 Standard Form 295, Subcontract Report

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD:
☐ OCT 1 - MAR 31 ☐ OCT 1 - SEPT 30 YEAR

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY
☐ NAVY
☐ AIR FORCE
☐ DEFENSE LOGISTICS AGENCY
☐ NASA
☐ GSA
☐ DOE
☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one)*
☐ PRIME CONTRACTOR ☐ BOTH
☐ SUBCONTRACTOR

8. TYPE OF PLAN
☐ INDIVIDUAL ☐ COMMERCIAL

IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES

a		c	
b		d	

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*		
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c. TOTAL *(Sum of 10a and 10b.)*		
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)*		

14. REMARKS

15. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM

a. NAME | b. TITLE | c. TELEPHONE NUMBER: AREA CODE | NUMBER

16. CHIEF EXECUTIVE OFFICER

a. NAME | c. SIGNATURE

b. TITLE | d. DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 295 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.219 (b)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lowes tier subcontractors.

10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 13: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commerical" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 13: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 12 (i.e., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.

3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial products covered by an approved Commercial Plan were received.

DEFINITIONS

1. Commercial item means a product or service that satisfies the definition of commerical item in Section 2.101 of the Federal Acquisition Regulation.

2. Commercial plan means a subcontracting plan that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

3. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

4. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

5. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HC), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV.) BACK

[FR Doc. 97–9175 Filed 4–10–97; 8:45 am]
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federal register

Friday
April 11, 1997

Part IV

Department of Housing and Urban Development

Funding Availability for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4163–N–01]

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces the availability of approximately $1,265,000 in funds for emergency shelter grants to be allocated to Indian tribes and Alaskan Native villages by competition for fiscal year (FY) 1997. Assistance provided to Indian tribes and Alaskan Native villages under this NOFA will be used to help improve the quality of existing emergency shelters for the homeless, to make available additional emergency shelters, to meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and to help prevent homelessness. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities. This NOFA contains: (1) Information concerning eligible applicants, (2) Information on funding available within each HUD Indian program region, and (3) Information on application requirements and procedures.

DATES: Applications must be received by the appropriate HUD Office of Native American Programs (ONAP) by no later than 3 p.m. local time (i.e., the time in the office to which the application is submitted) on May 23, 1997.

ADDRESSES: Application packages are available from the HUD Offices of Native American Programs (ONAPs) listed in Appendix 1 to this NOFA. The Office of Native American Programs (ONAP) serving the area in which the applicant's project is located must receive an original application and one copy by the deadline described in the **DATES** section of this NOFA.

This NOFA and the application package are available on the World Wide Web through HUD's Home Page at http://www.hud.gov/indemerg.html.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate Office of Native American Programs (ONAPs) for further information. Appendix 1 to this NOFA contains a complete list of these offices with their addresses and telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Summary of Competition

Purpose of Program: To help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness.

Eligible Applicants: Any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States, as described further in section III.B.(1) of this notice.

Deadline for Receipt of Applications: May 23, 1997, by 3 p.m. local time.

Submission Requirements: See Appendix 2 to this NOFA.

Available funds: $1,265,000.

II. Authority, Purpose, and Substantive Description

The Emergency Shelter Grants (ESG) program was first established in section 101(g) of Public Law 99–500 (approved October 18, 1986), making appropriations for fiscal year (FY) 1987, as provided in H.R. 5313. The program was reauthorized with amendments in the Stewart B. McKinney Homeless Assistance Act, as amended (Pub. L. 100–77; 42 U.S.C. 11371–11378) (McKinney Act). Section 832(f) of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA) provided for the explicit eligibility of Indian tribes for ESG program assistance. Regulations governing the ESG program are in 24 CFR part 576, as amended by the final rule for the Emergency Shelter Grant program published in the **Federal Register** on October 2, 1996 (61 FR 51546).

Approximately $1,265,000 is available for the Indian Emergency Shelter Grants (ESG) program as authorized by subtitle B, title IV of the Stewart B. McKinney Homeless Assistance Act. The preamble of the proposed rule on Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages, published in the **Federal Register** on April 5, 1993 (58 FR 17764), provides informative details on the method for allocating these funds.

Assistance provided to Indian tribes and Alaskan Native villages under this notice of funding availability (NOFA) will be used to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities.

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, HUD has in recent years developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan. While tribes and Indian housing authorities are not required to execute a Consolidated Plan, comprehensive planning by tribes is encouraged.

Elsewhere in today's **Federal Register**, HUD is publishing the following related NOFAs: the NOFA for Block Grant Program for Indian Tribes and Alaskan Native Villages, and the NOFA for Indian Applicants under the HOME program. HUD expects to publish within the next few weeks the NOFA for Indian Housing Development.

To foster comprehensive, coordinated approaches by communities, HUD intends for the remainder of FY 1997 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. HUD may consider additional steps on NOFA coordination for FY 1998.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

III. Application Process

A. Allocation Amounts

This NOFA announces the availability of approximately $1,265,000 in funding for FY 1997 to fund competitive grants to Indian tribes for emergency shelter grants. Set-aside allocations of the total amount to each area Office of Native American Programs (ONAP) are detailed in the following chart:

ALLOCATION OF ESG SET-ASIDE FOR INDIAN TRIBES BY HUD AREA ONAPS FOR FY 1997

Eastern/Woodlands	$211,255
Southern Plains	249,837
Northern Plains	239,338
Southwest	337,755
Northwest	108,790
Alaska	118,025
Total:	1,265,000

HUD reserves the right to negotiate reductions in the amounts requested by applicants based on the overall demand for the funds. HUD further reserves the right to reallocate these amounts as provided in section III.F, Ranking and Selection, of this NOFA. Each Indian tribe must spend all of the grant amounts it is awarded within 24 months of the date of the grant award by HUD. Any emergency shelter grant amounts that are not spent within this time period may be recaptured and added to the following fiscal year's ESG set-aside for Indian tribes.

B. Eligibility and Threshold Requirements

(1) *Eligible applicants.* Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States that is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450), or that had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of the Treasury, Office of Revenue Sharing.

Tribal organizations that are eligible under title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that act for funds under this NOFA when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with noneligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities. For instance, private nonprofit organizations are not eligible to apply directly to HUD for a grant, but may receive funding from a grantee if the grantee determines that the nonprofit has the financial and organizational capacity to carry out the proposed activities.

(2) *Thresholds.* The selection process for the Indian tribe set-aside program includes a preliminary threshold review. The applicant must clearly demonstrate and HUD will review each application to determine whether:

(a) The application is adequate in form, time, and completeness;

(b) The applicant is eligible; and

(c) The proposed activities and persons to be served are eligible for assistance under the program.

(d) As it relates to new construction, all proposed buildings are in compliance with section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA). The applicant can show this either by having an architect certify to the fact or provide design plans for review by HUD's Office of Fair Housing & Equal Opportunity.

C. Obtaining Applications

Application packages are available from the HUD area Offices of Native American Programs listed in Appendix 1 to this NOFA. They are also available on the World Wide Web through HUD's Home Page at http://www.hud.gov/indemerg.html.

D. Submitting Applications

The ONAP serving the area in which the applicant's project is located must receive an original application and one copy no later than 3 p.m. local time (i.e., the time in the office to which the application is submitted) on the deadline date of May 23, 1997. Applications transmitted by FAX will not be accepted. A determination that an application was received on time will be made solely on receipt of the original application at the appropriate Office of Native American Programs serving the applicant's project.

The deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat any application that is received after the deadline as ineligible for consideration. Applicants should take this practice into account and make early submission of their materials to avoid any risk of ineligibility brought about by unanticipated delays or other delivery-related problems.

E. Rating Criteria

Applications that fulfill each of the threshold review requirements described in section III.B, Eligibility and Threshold Requirements, will be rated based on the following criteria, for a maximum score of 105 points:

(1) *Applicant capacity (30 points).* HUD will award up to 30 points to an applicant that demonstrates the ability to carry out activities under its proposed program within a reasonable time, and in a successful manner, after execution of the grant agreement by HUD. The applicant's description of its previous experience, such as whether it has received a grant under this program, how many grants it has received, and whether the grants have been closed out successfully, will weigh heavily in the scoring. Documented evidence of poor or slow performance in the ESG program will enter strongly into that determination. The applicants that rate highest on this criterion will show substantial experience as an organization and/or staff in past endeavors that are directly related to the proposed project.

(2) *Need (20 points).* HUD will award up to 20 points to an applicant that demonstrates the existence of an unmet need for the proposed project in the area to be served. The applicants that rate highest on this criterion will: (a) clearly define the unmet housing and essential services needs of the homeless population proposed to be served in the area to be served by the project, (b) demonstrate in-depth knowledge of the population to be served and its needs, and (c) set forth an outreach strategy that assures that the intended population will be served. In reviewing applications under this criterion, HUD will consider demonstrated evidence of need such as the following: (1) The existence and length of the waiting list from the Indian Housing Authority, or other documentation regarding housing waiting lists (e.g., for the Indian HOME Program or the Bureau of Indian Affairs Housing Improvement Program), and how long a homeless individual could expect to remain on such a waiting list; (2) Data on the degree of housing overcrowding; (3) A housing survey

conducted by the Tribe; and (4) Documentation for type of assistance needed (e.g., the use of police reports or other documentation of domestic violence abuse).

(3) *Service to homeless population (20 points).* HUD will award up to 20 points to an applicant that proposes to serve that part of the Indian homeless population that is most difficult to reach and serve, i.e., those persons having a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, sleeping accommodations for human beings. In urban areas, this is usually referred to as living ''on the street.'' To the extent that Indians living on reservations live in such situations (e.g., sleeping in cars, abandoned structures, out in the open), they meet the definition of living in conditions similar to living on the street.

In reviewing applications under this criterion, HUD will consider the extent to which the application identifies the hard-to-reach Indian homeless population and describes why this population is difficult to reach and serve, e.g., in terms of the population's geographic location, specific problems, or willingness to enter into the program. HUD will focus upon proposed outreach and intake plans, and especially the degree to which such plans would maximize the likelihood that homeless persons would be served by the proposed project. The outreach strategy/intake procedures to seek out and evaluate the needs of the population to be served should be clearly described in the application.

(4) *Appropriateness of essential services (30 points).* HUD will award up to 30 points to an applicant that proposes essential services that: (a) are appropriate to the unmet needs of the population proposed to be served, as those needs are described in the application in accordance with criterion 2 (Need); (b) are used or coordinated with existing sources of supportive services and networks of support in the community; and (c) to the degree possible, help to move residents to longer-term housing situations. Applicants should describe what services are available and how they will make those services accessible to the people they serve. In addition, HUD will evaluate the means by which the people to be served will be assisted in moving to permanent housing that is appropriate and affordable. Applicants should describe what resources are available to assist the population they serve to find permanent housing.

(5) *Place Based Criterion (5 bonus points).* HUD will award between one and five points for projects for which it has been demonstrated that coordination with programs designed and implemented through other tribal or regional governmental entities or in cooperation with nonprofit groups has reduced the cost of services, maximized effective use of grant funds, and/or addressed a broad range of community based assistance programs. To be eligible for these points, the applicant must provide in its application a narrative that describes its efforts and success in coordinating community based programs, and documentation that supports the cooperation and coordination of resources.

F. Ranking and Selection

Applications from Indian tribes within the area served by the applicable HUD Office of Native American Programs will be assigned a rating score and placed in ranked order, based upon the rating criteria listed in section III.E of this NOFA. Only those applications receiving at least 50 total points will be given funding consideration. In the final stage of the selection process, qualified applicants will be selected for funding in accordance with their ranked order within each area ONAP, to the extent that funds are available within that area ONAP's jurisdiction.

In the event of a tie between applicants, the applicant with the highest total points for rating criterion (2), Need, in section III.E of this NOFA, will be selected. In the event of a procedural error that, when corrected, would warrant selection of an otherwise eligible applicant under this NOFA, HUD may select that applicant when sufficient funds become available.

Depending on the availability of funds, HUD may fund qualified applications in rank order regardless of location.

IV. Checklist for Application Submission Requirements

A checklist of submission requirements is provided in Appendix 2 to this NOFA, to assist the applicant in preparing a complete application.

V. Corrections to Deficient Applications

HUD will notify the applicant if there are any curable technical deficiencies in the application. Curable technical deficiencies relate to minimum eligibility requirements (such as certifications and signatures) that are necessary for funding approval but that do not relate to the quality of the applicant's program proposal under the selection criteria. The applicant must submit corrections in accordance with the information provided by HUD within 14 calendar days of the date of the HUD notification.

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in an applicant's application, or to request additional or missing information. The clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

VI. Findings and Certifications

A. Paperwork Reduction Act Statement

The information collection requirements contained in this Notice of Funding Availability (NOFA) have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0205. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

B. Environmental Impact

This NOFA provides funding under, and does not alter the environmental requirements of, regulations in 24 CFR part 576, which have been previously published in the **Federal Register**. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). For individual grants, the grantee must comply with the regulations in part 576, including the environmental review procedures in 24 CFR 576.57(e).

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA 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. As a result, this NOFA is not subject to review under the Order. This NOFA announces the availability of funds set aside for Indian tribes for emergency shelter activities and invites applications from eligible applicants.

D. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that

this NOFA, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance, and general well-being. Since any impact on families is beneficial, no further review is considered necessary.

E. Economic Opportunities for Low- and Very Low-Income Persons

All applicants are herein notified that the provisions of section 3 of the Housing and Urban Development Act of 1968, as amended (Pub. L. 102–550; 12 U.S.C. 1701u), and the regulations in 24 CFR part 135 are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give, to the greatest extent feasible and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting, and other economic opportunities to section 3 residents and section 3 business concerns. Tribes that receive HUD assistance described in this NOFA shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

F. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235; 42 U.S.C. 3545) (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures

HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

G. Section 103 of the HUD Reform Act

Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235; 42 U.S.C. 3537a), and HUD's regulations implementing section 103, codified at subpart B of 24 CFR part 4, apply to this funding competition. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are restrained by these requirements from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.)

H. Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

I. Catalog of Federal Domestic Assistance

The program number is 14.231.

Authority: 42 U.S.C. 11376; 42 U.S.C. 3535(d).

Dated: April 3, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix 1—HUD Offices of Native American Programs

Tribes and IHAs location	ONAP addresses
East of the Mississippi River (including all of Minnesota) and Iowa: Elton Jones e-mail: elton_jones@hud.gov	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 886–4532 or (800) 735–3239, TTY Numbers: 1–800–927–9275 or 312–886–3741.

Tribes and IHAs location	ONAP addresses
Louisiana, Missouri, Kansas, Oklahoma, and Texas except for Ysleta del Sur:	
William Melton e-mail: william__d.__melton@hud.gov	Southern Plains Office of Native American Programs, 6.IPI, 500 W. Main, Suite 400, Oklahoma City, Oklahoma 73102, (405) 553–7525, TTY Numbers: (405) 231–4181 or (405) 231–4891.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming:	
Robert Harris e-mail: j.__robert__harris@hud.gov	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Co 80202–3607, (303) 672–5457, TTY Number: (303) 672–5248.
Arizona, California, and Nevada:	
Robert Kroll e-mail: robert__s.__kroll@hud.gov	Southwest Office of Native American Programs, 9EPID, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4197, TTY Number: (602) 379–4461 or
New Mexico and Ysleta del Sur in Texas:	
Johnny Cata e-mail: johnny__j.__cata@hud.gov	Albuquerque Division of Native American Programs, 9EPIDI, Albuquerque Plaza, 201 3rd Street, N.W. Suite 1830, Albuquerque, New Mexico 87102–3368, (505) 766–1372, TTY Number: None.
Idaho, Oregon and Washington:	
Jeanne McArthur e-mail: jeanne__mcarthur@hud.gov	Northwest Office of Native American Programs, 10PI, 909 First Avenue, Suite 300, Seattle, Washington 98104–1000, (206) 220–5271, TTY Number: (206) 220–5185.
Alaska:	
Donna Hartley e-mail: donna__hartley@hud.gov	Alaska Office of Native American Programs, 10.1PI, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4603, TTY Number: (907) 271–4328.

Appendix 2—Checklist of Application Submission Requirements

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

—(1) Applicant Information, including name, address, contact person, and telephone number.

—(2) Standard Form 424;

—(3) Certifications of compliance with the requirements of:

—(a) 24 CFR 576.21(a)(4), concerning assistance provided for homelessness prevention activities; § 576.53, concerning the continued use of buildings as emergency shelters for the population to be served; § 576.55, concerning building standards; § 576.56, concerning assistance to the homeless; and § 576.59, concerning displacement and relocation;

—(b) The Indian Civil Rights Act (25 U.S.C. 1301), and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b));

—(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

—(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07);

—(e) Executive Orders 11625, 12432, and 12138, promoting the use of minority business enterprises and women-owned businesses to the maximum extent consistent with the Indian Self-Determination and Education Assistance Act;

—(f) The requirements of 24 CFR part 24, concerning the Drug-Free Workplace Act of 1988;

—(g) Section 832(e)(2)(C) of NAHA, concerning the confidentiality of records pertaining to any individual provided family violence prevention or treatment services;

—(h) Section 832(g) of NAHA, concerning minimum habitability standards prescribed by the Department;

—(i) Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR part 58, concerning assumption of the HUD environmental review responsibilities;

—(j) Prohibitions on the use of Federal funds for lobbying, and the completion of SF–LLL, Disclosure Form to Report Lobbying, if applicable.

—(k) 42 U.S.C. 11375(c)(7), as added by the Housing and Community Development Act of 1992, concerning the involvement through employment, volunteer services, or otherwise, to the maximum extent practicable, of homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities.

—(l) Section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations in 24 CFR part 135.

—(4) Form HUD–2880, Applicant/Recipient Disclosure/Update Form, if applicable.

—(5) Project Summary and Proposed Budgets.

—(6) Description of the homeless population to be served.

—(7) Facility Description.

—(8) Narrative addressing the rating criteria.

—(9) Matching funds certification as required under § 576.51, and section 415 of the McKinney Act (42 U.S.C. 11375(a)). Each grantee must match the funding provided by HUD with an equal amount of funds from sources other than under part 576. These funds must be provided after the date of the grant award to the grantee.

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federal register

Friday
April 11, 1997

Part V

Department of Housing and Urban Development

Funding Availability (FY 1997) for Community Block Grant Program for Indian Tribes and Alaska Native Villages; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4180–N–01]

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (Fiscal Year 1997) Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year 1997.

SUMMARY: This notice announces the availability of $67,453,491 for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG Program). In the body of this Notice of Funding Availability (NOFA) is information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility and available amounts;

(b) A list of steps involved and a checklist of the exhibits required in the application process, including where and how to apply and what to submit; and

(c) A description of application processing, including the selection process and the selection criteria.

DATES: Applications must be received by the appropriate Area ONAP of the HUD Office of Native American Programs (ONAP) no later than 3:00 P.M. on Friday, July 25, 1997. Application materials will be available from each Area ONAP. General program questions may be directed to the Area ONAP serving your area or to Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Ave., San Francisco, CA 94102; telephone (415) 436–8122. The TTY number is (415) 436–6594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Changes From FY 1996 NOFA

1. *Conformance with the Requirements of the July 31, 1996 Final Rule.* On July 31, 1996 (61 FR 40084), HUD published a final rule which revised the requirements for the ICDBG Program (24 CFR part 953). The FY 1996 NOFA was published on May 9, 1996 (61 FR 21338). The FY 1996 was therefore written to comply with the requirements of the interim rule (July 27, 1994, 59 FR 38326) which preceded the July 31, 1996 final rule. All references to 24 CFR part 953 in this FY 1997 NOFA are to the final rule.

There is one substantive difference between the interim and final rules which affects the process or procedures covered in the NOFA; the project specific threshold requirements for economic development projects have been changed. The previous threshold requirement that ''an applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project'' has been deleted. This requirement has proven to be an unnecessary complication for potential applicants for assistance.

One of the two remaining threshold requirements for economic development projects (i.e., that an analysis demonstrates that public benefit commensurate with the assistance requested can reasonably be expected) has been expanded in scope and revised. The expansion/revision of this threshold was done to state this threshold in a manner consistent with the objectives for the evaluation and selection of economic development projects which were set forth in section 806 of the Housing and Community Development Act of 1992.

2. *Population to be Considered for Grant Ceilings—Southwest ONAP.* Clarifying language has been included in Section III.(a)(3) so that the population to be considered for grant ceiling levels is unambiguous. In addition, the lowest population category has been revised to acknowledge that there are otherwise eligible applicants which because of recent recognition or untermination have no land base and, therefore, no on-reservation or rancheria Native American population.

3. *Imminent Threat Requirements and Process.* The wording of the NOFA has been revised (Section III.(a)(4)). The emergency nature of the problem to be addressed has been emphasized. Also, the fact that the deadline established by the NOFA does not apply to requests for assistance to address an imminent threat has been clarified.

4. *Southwest Area ONAP—Closing of the San Francisco Office.* The address of the San Francisco Office of the Southwest Area ONAP has been deleted from the listing of Area ONAP offices (Section IV.(a)(1)) since this office has been closed. Program responsibilities for applicants and grants in the former jurisdiction of that office have been transferred to the office in Phoenix.

5. *Housing Rehabilitation Grant Limit.* The grant limit set forth in Section VIII.(b)(2) for applicants in the jurisdiction of the Northwest Area ONAP has been increased to $25,000.

6. *Land to Support New Housing—Selection Criterion VIII.(e)(2)(v).* In response to equity concerns raised by the Southern Plains Area ONAP, the language of this criterion has been changed. It will not be necessary for an applicant to provide documentation from the Bureau of Indian Affairs which demonstrates that the land to be purchased can and would be taken into trust to obtain the rating points available under this criterion. However, if this documentation is not provided, it will be necessary for the applicant to provide specified documentation that all taxes and fees on the land can and would be paid.

7. *Errors and Appeals.* The section formerly titled *Procedural Error and Appeals* has been re-titled *Errors and Appeals* (Section XI.). The following substantive changes have also been made. The basis upon which an appeal may be made has been clarified; it has been made explicit that only a perceived arithmetic error may form the basis of an appeal. In addition, the time period allowed for an appeal has been reduced to thirty days after notification of a funding decision.

8. *Editorial and Formatting Revisions.* In addition to the changes discussed above, this notice makes several technical changes to the FY 1996 NOFA. These editorial and formatting changes will make the NOFA easier to understand. Among other revisions, this notice divides several of the lengthy sections contained in the FY 1996 NOFA. For example, this NOFA sets forth the thresholds and selection criteria for Housing, Community Facilities, and Economic Development in separate sections. Other technical changes include: (1) moving the necessary definitions up front to a new Section II; (2) redesignating the NOFA paragraphs to conform to the designations used by HUD in its other regulations and notices; and (3) moving the information regarding the Paperwork Reduction Act of 1995 and the HUD Reform Act to the section titled ''Findings and Certifications'' (formerly titled ''Other Matters'').

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level.

Toward this end, the Department in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan. While tribes and Indian housing authorities are not required to execute a Consolidated Plan, comprehensive planning by tribes is encouraged.

Elsewhere in today's **Federal Register**, the Department is publishing the following related NOFAs: the NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages; and the NOFA for Indian Applicants under the HOME Program. The Department expects to publish within the next few weeks the NOFA for Indian Housing Development.

To foster comprehensive, coordinated approaches by communities, the Department intends for the remainder of FY 1997 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. Additional steps on NOFA coordination may be considered for FY 1998.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

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I. Purpose and Authority

(a) *Purpose.* This notice announces the availability of $67,453,491 for the ICDBG Program.

(b) *Authority.* Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR part 953.

II. Definitions

Adopt means to approve by formal tribal resolution.

Assure means to comply with a specific NOFA requirement. The applicant should state its compliance or its intent to comply in its application.

Document means to supply supporting written information and/or data in the application which satisfies the NOFA requirement.

Leverage means resources the grantee will use in conjunction with ICDBG funds to achieve the objectives of the project. Resources include, but are not limited to:

(1) Tribal trust funds;

(2) Loans from individuals or organizations;

(3) State or Federal loans or guarantees;

(4) Other grants; and

(5) Noncash contributions and donated services.

(See section IV.(c) of this NOFA for documentation requirements for point award for leveraged resources.)

Project Cost means the total cost to implement the project. Project cost includes both ICDBG and non ICDBG funds and resources.

Section 8 standards means housing quality standards contained in 24 CFR 982.401 (Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance Under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program).

Standard Housing/Standard Condition means housing which meets the housing quality standards (HQS) adopted by the applicant.

(1) The HQS adopted by the applicant must be at least as stringent as the Section 8 standards unless the Area ONAP approves less stringent standards based on a determination that local conditions make the use of Section 8 standards infeasible.

(2) Applicants may submit their request for the approval of standards less stringent than Section 8 standards prior to the application due date. If the request is submitted with the application, applicants should not assume automatic approval by the Area ONAP.

(3) The adopted standards must provide for the following:

(i) That the house is safe, in a physically sound condition with all systems performing their intended design functions;

(ii) A livable home environment;

(iii) An energy efficient building and systems which incorporate energy conservation measures; and

(iv) Adequate space and privacy for all intended household members.

Tribe means an Indian Tribe, band, group or nation, including Alaska Indians, Aleuts, Eskimos, Alaska Native Villages, ANCSA Village Corporations and Regional Corporations.

III. Funding and Eligibility

(a) *Funding.* (1) *General.* Amendments to Title I of the Housing and Community Development Act of 1974 have required that the allocation for Indian Tribes be awarded on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR part 953. Applicants within an Area ONAP's geographic jurisdiction compete only against each other for that Area ONAP's allocation of funds.

(2) *Allocations.* The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 953.101. Following these requirements, the allocations for FY 1997 are as follows:

Eastern/Woodlands	$5,178,418
Southern Plains	12,254,896
Northern Plains	10,336,441
Southwest	28,199,896
Northwest	3,949,293
Alaska	5,534,557
Total	65,453,491

The total allocation includes $453,491 in unused funds from the amount reserved by the Assistant Secretary in Fiscal Year 1996 for imminent threat grants. As indicated in Section III.(a)(4) below, $2,000,000 will be retained to fund imminent threat grants.

(3) *Grant Ceilings.* The authority to establish grant ceilings is found at 24 CFR 953.100(b)(1). Grant ceilings are established for FY 1997 funding at the following levels:

Area ONAPs	Population	Ceiling
Eastern/Woodlands.	All	$300,000
Southern Plains.	All	750,000
Northern Plains	All	800,000
Southwest	50,001+	5,000,000
	10,501–50,000	2,500,000
	9,001–10,500	2,000,000
	7,501–9,000	1,500,000
	6,001–7,500	1,000,000
	4,501–6,000	750,000
	3,001–4,500	650,000
	1,501–3,000	550,000
	0–1,500	450,000
Northwest	All	320,000
Alaska	All	500,000

For the Southwest Area ONAP jurisdiction, the population used to determine ceiling amounts is the Native American population which resides on a reservation or rancheria.

(4) *Imminent Threats.* (i) The criteria for grants to alleviate or remove imminent threats to health or safety that require an immediate solution are described at 24 CFR part 953, subpart E. Please note that the problem to be addressed must be such that an emergency situation would exist if it were not addressed. In accordance with the provisions of 24 CFR part 953, subpart E, $2,000,000 will be retained to meet the funding needs of imminent threat applications submitted to any of the Area ONAPs. The grant ceiling for imminent threat applications for FY 1997 is $350,000. This ceiling is established pursuant to the provisions of § 953.400(c).

(ii) Requests for assistance under the imminent threat set-aside (24 CFR 953, subpart E) do not have to be submitted by the deadline established in this NOFA; the deadline applies to application submitted for assistance under 24 CFR 953, subpart D—single purpose grants.

(iii) If, in response to a request for assistance, an Area ONAP issues a letter to proceed under the authority of § 953.401(a), an application must be submitted to and approved by the Area ONAP before a grant agreement may be executed. This application must consist of the following components:

(A) Standard Form 424—Application for Federal Assistance

(B) Brief description of the proposed project

(C) Form HUD–4123—Cost Summary

(D) Form HUD–4125—Implementation Schedule

(E) Form HUD–2880—Applicant/Recipient Disclosure/Update Report.

(F) Form HUD–4126—Certifications.

(G) Drug-free workplace certification (24 CFR part 24, subpart F).

(b) *Eligible Activities.* Activities that are eligible for ICDBG funds are identified at 24 CFR part 953, subpart C.

(c) *Applicant Eligibility.* (1) *General.* To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaska Native Village (or as a tribal organization) by the application submission date.

(2) *Tribal Organizations.* Tribal organizations are permitted to submit applications under 24 CFR 953.5(b) on behalf of eligible tribes or villages when one or more eligible tribe(s) or village(s) authorize the organization to do so under concurring resolutions. As is stated in this regulatory section, the tribal organization must itself be eligible under Title I of the Indian Self-Determination and Education Assistance Act.

(3) *Successors to Eligible Entities.* If a tribe or tribal organization claims that it is a successor to an eligible entity, the Area ONAP must review the documentation to determine whether it is in fact the successor entity.

(4) *Alaskan Tribal Entities.* (i) Due to the unique structure of tribal entities eligible to submit ICDBG applications in Alaska, and as only one ICDBG application may be submitted for each area within the jurisdiction of an entity eligible under 24 CFR 953.5, a Tribal Organization which submits an application for activities in the jurisdiction of one or more eligible tribes or villages must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round. The hierarchy for funding priority continues to be the IRA Council, the Traditional Village Council, the Village Corporation and the Regional Corporation.

(ii) On February 16, 1995 (60 FR 9250), the Bureau of Indian Affairs (BIA) published a **Federal Register** Notice entitled ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs.'' This notice provides a listing of Indian Tribal Entities in Alaska found to be Indian Tribes as the term is defined and used in 25 CFR part 83. Additionally, pursuant to Title I of the Indian Self Determination and Education Assistance Act, ANCSA Village Corporations and Regional Corporations are also considered tribes and therefore eligible applicants for the ICDBG program.

(iii) Any questions regarding eligibility determinations and related documentation requirements for entities in Alaska should be referred to the Alaska Area ONAP prior to the deadline for submitting an application. (See 24 CFR 953.5 for a complete description of eligible applicants.)

IV. Application Process and Submission Requirements

(a) *Application Process*

(1) An application package may be obtained from the Area ONAP in the following geographic locations:

All States East of the Mississippi River, Plus Iowa and Minnesota: Eastern/Woodlands Office of Native American Programs, Community Development and Tribal Relations (CD & TR) Staff, 77 West Jackson Blvd., Chicago, IL 60604; Telephone: (312) 886–4532, Ext. 2815.

Louisiana, Kansas, Oklahoma, and Texas, except West Texas: Southern Plains Office of Native American Programs, CD & TR Staff, Suite 400, 500 W. Main Street, Oklahoma City, OK

73102–3202; Telephone: (405) 553–7525.

Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Northern Plains Office of Native American Programs, CD & TR Staff, First Interstate Tower North, 833 17th Street, Denver, CO 80202–3607; Telephone: (303) 672–5457.

Arizona, California, and Nevada: Southwest Office of Native American Programs, CD & TR Staff, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, AZ 85004–2361; Telephone: (602) 379–4197.

New Mexico and West Texas: Southwest Office of Native American Programs, CD & TR Specialist, Albuquerque Plaza, 201 3rd Street N.W., Suite 1830, Albuquerque, NM 87102–3368; Telephone: (505) 766–1372.

Idaho, Oregon, Washington: Northwest Office of Native American Programs, CD & TR Staff, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000; Telephone: (206) 220–5271.

Alaska: Alaska Office of Native American Programs, CD & TR Staff, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4135; Telephone: (907) 271–4603.

(2) Completed applications must be submitted to the appropriate Area ONAP, listed above, from which application information and packages were obtained. All telephone numbers listed may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

(3) Applications must be received by the appropriate Area ONAP no later than 3:00 P.M. on the deadline date, Friday, July 25, 1997.

(b) *Application Submission Requirements and Checklist*

(1) *General.* An applicant shall submit only one application. The ICDBG grant amount requested shall not total more than the grant ceiling. An application may include an unlimited number of eligible projects (e.g., housing or public facilities). Each project within an application will be rated separately.

(2) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

(i) Generally available, published data are substantially inaccurate or incomplete;

(ii) Data provided have been collected systematically and are statistically reliable;

(iii) Data are, to the greatest extent feasible, independently verifiable; and

(iv) Data differentiate between reservation and BIA service area populations, when applicable.

(3) *Publication of community development statement.* Applicants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of § 953.604.

(4) *Application Submission.* The application shall include:

(i) Standard Form 424—Application for Federal Assistance;

(ii) Community Development Statement which includes:

(A) Components that address the relevant selection criteria;

(B) A brief description or an updated description of community development needs;

(C) A brief description of projects proposed to address needs, including scope, magnitude, and method of implementing the project;

(D) A schedule for implementing the project (form HUD–4125 Implementation Schedule); and

(E) Cost information for each separate project, including specific activity costs, administration, planning, and technical assistance, total HUD share (form HUD–4123 Cost Summary);

(iii) Certifications—form HUD 4126;

(iv) Drug-free Workplace Certification (24 CFR part 24, subpart F);

(v) Applicant/Recipient Disclosure/Update Report—form HUD 2880, as required under subpart A of 24 CFR part 4, Accountability in the Provision of HUD Assistance;

(vi) A map showing project location, if appropriate;

(vii) If the proposed project will result in displacement or temporary relocation, a statement that identifies:

(A) The number of persons (families, individuals, businesses and nonprofit organizations) occupying the property on the date of the submission of the application (or date of initial site control, if later);

(B) The number to be displaced or temporarily relocated;

(C) The estimated cost of relocation payments and other services;

(D) The source of funds for relocation; and

(E) The organization that will carry out the relocation activities;

(viii) If applicable, evidence of the disclosure required by 24 CFR 953.606(e).

(c) *Documentation requirements for point award for leveraged resources.* (1) *General.* For the applicant's own resources, a council resolution which identifies and commits the resources must be included in the application. For resources to be provided by another entity, written verification of an application or request for the leveraged resources must be included in the application.

(2) *Resources contributed by a public agency, foundation, or other public party.* (i) In addition to the requirement described in paragraph (c)(1) of this section, for grants or other contributed resources from a public agency, foundation, or other private party, a *written commitment* which may be contingent on approval of the ICDBG award must be *received* by the Area ONAP no later than *30 days* after the application deadline. This commitment must specifically identify or indicate:

(A) The dollar amount committed (or dollar value of the noncash resource and the basis for the valuation);

(B) That the resources are currently available or will be available when necessary for successful project implementation; and

(C) The project.

(ii) If the nature of the funding cycle of the contributing entity precludes such an entity from making a firm funding commitment in the 30 days provided by paragraph (c)(2)(i) of this section, such resources will be considered in the award of points if the entity provides a written statement indicating that the application or request for assistance has been received from the ICDBG applicant and stating the date by which its funding determination will be made. This date cannot be more than six months from the anticipated date of grant approval notification by HUD.

(iii) If the proposed project rates high enough for funding consideration, a special condition will be established in the grant agreement for the project. This condition will indicate that if a firm funding commitment for the leveraged resources is not provided within six months of the date of grant approval, the grant funds approved will be recaptured by HUD and will be used in accordance with the requirements of § 953.102.

(iv) The statement described in paragraph (c)(2)(ii) of this section must be received by the Area ONAP no later than *30 days* after the application deadline. If the commitment or statement is not received in the required timeframe or if the required information is not included, points will not be awarded for the proposed contribution.

(v) If the proposed project still rates high enough to be approved, a pre-award condition will be established which will require the applicant to provide evidence of firmly committed resources to cover the entire non-ICDBG

project cost. If this condition is not met, the grant will not be awarded.

(3) *Contributions of goods and services.* In addition to the above requirements for point award, special documentation must be included in the application for certain contributions. The contribution of goods and services will be considered for point award if the applicable requirements listed above are met; if the items or services are demonstrated and determined necessary to the actual development of the project; and comparable cost and/or time estimates are submitted which support the donation.

(4) *Contributions of land.* Land to be contributed will only be considered for point award when its use and area are integral to the development of the project. In addition, the value of the land must be verified by any of the following means or methods and this documentation *must be included in the application:*

(i) A site specific appraisal no more than two years old;

(ii) An appraisal of a nearby comparable site also no more than two years old; and

(iii) A reasonable extrapolation of land value based on current area realtors value guides.

V. Application Screening and Review Process

(a) *Screening for Acceptance.* Each Area ONAP will screen applications for single purpose grants. Applications failing this screening shall be rejected and returned to the applicants unrated. Area ONAPs will accept applications if all the criteria listed below as items (1) through (6) are met:

(1) The application is received by the appropriate Area ONAP no later than 3:00 P.M. local time on the deadline date;

(2) The applicant is eligible;

(3) The proposed activities are eligible. Activities assisted with ICDBG funds are subject to the requirements of section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8;

(4) The application contains substantially all the components specified in Section IV.(b)(4) of this notice;

(5) At least 70% of the grant funds are to be used for activities that benefit low and moderate income persons, in accordance with the requirements of § 953.208; and,

(6) The application is for an amount which does not exceed the grant ceilings that are established by the NOFA.

(b) *Application Review Process.*

(1) *Threshold review.* The Area ONAP will review each application that passes the screening process to ensure that each applicant and each proposed project meets the applicable threshold requirements set forth in 24 CFR 953.301(a) and 953.302, as implemented by this NOFA. *If an applicant fails to meet any of the applicant-specific thresholds, its application cannot be accepted for rating and ranking. Project(s) that do not meet the community development appropriateness or applicable project-specific thresholds will not be considered for funding.*

(2) *Rating Team.* All projects that meet the acceptance criteria and threshold requirements will be reviewed and rated by an Area ONAP rating team of at least three voting members. The Area ONAP rating team will examine each project to determine in which one of the rating categories set forth in 24 CFR 953.303(a) the project most appropriately belongs. The project will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component are 100, which is the maximum any project can receive.

(3) *Public service projects.* Due to the statutory 15 percent cap on public services activities, applicants may not receive single purpose grants solely to fund public services activities. However, any application may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the other project(s) included in the application. If an application does not receive full funding, the public services allocation will be proportionately reduced to comprise no more than 15 percent of the total grant award.

(4) *Corrections to deficient applications and supplemental information.*

(i) The Area ONAP will not accept unsolicited information regarding the application after the application deadline has passed. The Area ONAP will notify applicants in writing of technical deficiencies in applications and permit them to be corrected. A technical deficiency is an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official.

(ii) The Area ONAP may request information for the purpose of clarifying the terms of an applicant's application, provided the additional information is consistent with regulatory requirements.

Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the technical deficiency or provide the requested supplemental information. If the technical deficiency is not corrected within this time period, the Area ONAP will reject the application as incomplete. If the supplemental information is not provided in this time period and, as a consequence, the Area ONAP determines that the applicant has failed to establish compliance with the requirements of 24 CFR part 953, the application will be returned, unrated.

(iii) No information submitted after the application due date can enhance a project's rating, and a new project may not be substituted for one included in the application.

(5) *Final ranking.* (i) All projects will be ranked against each other according to the point totals they receive, regardless of the rating category or component under which the points were awarded. Projects will be selected for funding based on this final ranking, to the extent that funds are available. Individual grant amounts will be determined in a manner consistent with the considerations set forth in 24 CFR 953.100(b)(2).

(ii) If the Area ONAP determines that an insufficient amount of money is available to adequately fund a project, it may decline to fund that project and fund the next highest ranking project or projects for which adequate funds are available. The Area ONAP may select, in rank order, additional projects for funding if one of the higher ranking projects is not funded, or if additional funds become available.

(6) *Tiebreakers.* When rating results in a tie among projects and insufficient resources remain to fund all tied projects, Area ONAPs shall approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the following factors will be used in the order listed to resolve the tie:

(i) *Eastern/Woodlands Office*

(A) The applicant with the fewest active grants.

(B) The applicant that has not received an ICDBG grant over the longest period of time.

(C) The project that would benefit the highest percentage of low and moderate income persons.

(ii) *Southern Plains Office*

(A) The applicant that has not received an ICDBG grant over the longest period of time over the last 8 years.

(B) The applicant with the fewest active grants.

(C) The project that would benefit the highest percentage of low and moderate income persons.

(iii) *Northern Plains and Southwest Offices*

(A) The applicant that has not received an ICDBG grant over the longest period of time.

(B) The applicant with the fewest active grants.

(C) The project that would benefit the highest percentage of low and moderate income persons.

(iv) *Northwest Office*

(A) The applicant that has not received an ICDBG grant over the longest period of time.

(B) The applicant that has received the fewest ICDBG dollars since the inception of the program.

(C) The project that would benefit the highest percentage of low and moderate income persons.

(v) *Alaska Office*

(A) The applicant that has not received an ICDBG grant over the longest period of time.

(B) The project that would benefit the highest percentage of low and moderate income persons.

(C) The project that would benefit the most low and moderate income persons.

(c) *Pre-award requirements.*

(1) Successful applicants may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. Applicants will normally be given no less than thirty (30) calendar days to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the Area ONAP may determine that the applicant has not met the requirements and the grant offer may be withdrawn. The Area ONAPs shall require supporting documentation in those instances where:

(i) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or

(ii) The applicant has not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

(2) New projects may not be substituted for those originally proposed in the application.

(3) If the required conditions are not met within the prescribed time, HUD may unilaterally rescind the grant award.

(4) Grant amounts allocated for applicants unable to meet pre-award requirements will be awarded in accordance with Sections VIII, IX, and X of this NOFA.

VI. General Threshold Requirements

(a) *General.* Two types of general thresholds are set forth in 24 CFR 953.301(a): those that relate to applicants, and those that address the overall community development appropriateness of the project(s) included in the application. Project-specific thresholds are set forth in 24 CFR 953.302.

(b) *Applicant thresholds.* (1) *General.* Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project, on its past performance in the ICDBG program, and on its provision of housing assistance to low and moderate income tribal members.

(2) *Applicant-Specific Thresholds: Capacity.* The Area ONAP will assume, absent evidence to the contrary, that the applicant possesses, or can obtain the managerial, technical or administrative capability necessary to carry out the proposed project. The application should address who will administer the project and how the applicant plans to handle the technical aspects of executing the project. If the Area ONAP determines, based on substantial evidence (which could include information provided by the most recent risk analysis conducted by the Area ONAP), that the applicant does not have or cannot obtain the capacity to undertake the proposed project, the application will not receive further consideration.

(3) *Applicant-Specific Thresholds: Performance.* (i) *Community development.* (A) If an applicant has previously participated in the ICDBG Program, the Area ONAP shall determine whether the applicant has performed adequately in grant administration and management. This determination will include an evaluation of the most recent RADAR (Risk Analysis and Determination for Allocation of Resources) conducted by the Area ONAP for the applicant. The applicant is presumed to be performing adequately unless the Area ONAP makes a performance determination to the contrary during periodic evaluations.

(B) Where an applicant was found to be performing inadequately, the Area ONAP shall determine whether the applicant has corrected the deficiency or is following a schedule to correct performance to which the applicant and the Area ONAP have agreed. In cases of previously documented deficient performance, the Area ONAP must determine that the applicant has taken appropriate corrective action to improve its performance prior to the application due date.

(C) *The Area ONAP will inform in writing any potential applicant which has been determined not to meet this performance threshold no later than 30 days prior to the application due date.* If the performance threshold is not met as of the application submission deadline, an application will not be accepted for rating and ranking.

(ii) *Housing assistance.* (A) The applicant is presumed not to have taken actions to impede the provision of housing assistance for low and moderate income members of the tribe or village. Any action taken by the applicant to prevent or obstruct the provision or operation of assisted housing for low and moderate income persons shall be evaluated in terms of whether it constitutes inadequate performance by the applicant. If an applicant has established or joined an Indian Housing Authority (IHA), and this IHA has obtained housing assistance from HUD, the applicant's compliance with the obligations and responsibilities to the IHA set forth in the tribal ordinance which was the basis for the establishment or joining of the IHA will be a performance consideration.

(B) An applicant will not be held accountable for the poor performance of its IHA *unless* this inadequate performance is found to be a direct result of the applicant's action or inaction. Applicants which are members of ''umbrella'' IHAs will be judged only on their individual performance and will not be held accountable for the poor performance of other tribes that are members of the IHA.

(C) If an applicant has received ICDBG funds for the provision of new housing through a subrecipient, the Area ONAP will consider the following in making its determination regarding housing assistance performance:

(*1*) Whether the proposed units were constructed;

(*2*) Whether housing assistance was provided to the beneficiaries identified in the funded application, and if not, why not;

(*3*) Whether the applicant followed the provisions of its housing plan and procedures; and,

(*4*) Whether there were sustained complaints from tribal members regarding provision and/or distribution of ICDBG housing assistance.

(D) *The Area ONAP will inform in writing any potential applicant which has been determined not to meet the housing assistance performance*

threshold no later than 30 days prior to the application deadline.

(4) *Audits.* The thresholds described in paragraphs (b)(2) and (b)(3) of this section require the applicant to meet the following performance criteria:

(i) The applicant cannot have an outstanding ICDBG obligation to HUD or an ICDBG program that is in arrears, or it must have agreed to a repayment schedule. An applicant that has an outstanding ICDBG obligation that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current competition and from subsequent competitions until the obligations are current. If a grantee that was current at the time of application submission becomes delinquent during the review period, the application may be rejected.

(ii) The applicant cannot have an overdue or unsatisfactory response to an audit finding. If there is an overdue or unsatisfactory response to an audit finding, the applicant will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding. The Area ONAP administrator may provide exceptions to this disqualification in cases where the applicant has made a good faith effort to clear the audit finding. An exception may be granted when funds are due HUD or an ICDBG program as a result of a finding only when a satisfactory arrangement for repayment of the debt has been made and payments are current.

(c) *Community Development Appropriateness.* In order to rate and rank a project contained in an application that has passed the screening tests outlined in Section V. of this NOFA, Area ONAPs must determine that the proposed project meets the community development appropriateness thresholds set forth below:

(1) *Costs are reasonable.* The project must be described in sufficient detail so that the Area ONAP can determine:

(i) That costs are reasonable; and,

(ii) That the funds requested from the ICDBG program and all other sources are adequate to complete the proposed activity(ies) described in the application.

(2) *Project is Appropriate.* The project is appropriate for the intended use.

(3) *Project is Usable or Achievable.* The project is usable or achievable in a timely manner, generally within a two year period. The timetable for project implementation and completion must be set forth on the form HUD 4125—Implementation Schedule, included in the application. A period of more than two years is acceptable in certain circumstances, if it is established that such circumstances are beyond the applicant's control.

VII. Summary of Selection System Criteria and Point Awards

	Maximum points
Housing (Section VIII. of this NOFA)	
(a) Rehabilitation	
(1) Project Need and Design	
(i) % of funds for standard rehab	20
(ii) applicant's selection criteria	10
(iii) housing survey	15
(2) Planning and Implementation	
(i) rehabilitation policies	
(A) rehabilitation standards	5
(B) selection policies and procedures	10
(C) project implementation policies and procedures	10
(ii) post rehab maintenance	5
(iii) cost estimates	15
(iv) cost effectiveness	5
(3) Leveraging	5
Total points	100
(b) Land to Support New Housing	
(1) Project Need	40
(2) Planning and Implementation	
(i) suitability of the land	20
(ii) housing resources	10
(iii) supportive services	5
(iv) commitment of households	5
(v) land to trust status	5
(vi) infrastructure commitment	10
(vii) land meets need and is reasonably priced	5
Total points	100
(c) New Housing Construction	
(1) Project Need and Design	
(i) IHA member/assistance	15
(ii) housing policies and plan	20
(iii) beneficiary identification	10
(2) Planning and Implementation	
(i) occupancy standards	10
(ii) site acceptability	15
(iii) energy conservation design	5
(iv) housing survey	10
(v) cost effectiveness	5
(3) Leveraging	10
Total points	100
Community Facilities (Section IX. of this NOFA)	
(a) Infrastructure	
(1) Project Need and Design	
(i) meets an essential need	20
(ii) benefits the neediest	15
(iii) provides infrastructure/health and safety	25
(2) Planning and Implementation	
(i) maintenance and operation plan	15
(ii) appropriate and effective design scale and cost	15
(3) Leveraging	10
Total points	100
(b) Buildings	
(1) Project Need and Design	
(i) meets an essential need	20
(ii) benefits the neediest	10
(iii) provides building/health and safety	25
(iv) multi-use/multi-benefit	5
(2) Planning and Implementation	
(i) maintenance and operation plan	15
(ii) appropriate and effective design scale and cost	15
(3) Leveraging	10
Total points	100
Economic Development (Section X. of this NOFA)	
(a) Economic Development	
(1) Organization	8
(2) Project Success	
(i) market analysis	15
(ii) management capacity	15
(iii) financial analysis	15
(3) Leveraging	12
(4) Jobs	
(i) ICDBG cost/job	15
(ii) quality of jobs/training	5
(5) Additional considerations	15
Total points	100

VIII. Project Specific Thresholds and Selection Criteria for Housing

(a) *Specific threshold for housing category projects.* The applicant shall provide an assurance that households that have been evicted from HUD assisted housing within the past five years will not be assisted by the proposed project except in emergency situations. The Area ONAP Administrator will review each emergency situation proposed by an applicant on a case-by-case basis to determine whether an exception is warranted.

(b) *Rehabilitation Thresholds and Grant Limits.* (1) *Thresholds.* All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies prior to submitting an application. *These standards and policies must be submitted with the application.* The applicant shall provide an assurance that:

(i) Any house to be rehabilitated will be the permanent non-seasonal residence of the occupants; the residents will live in the unit at least nine months per year.

(ii) Houses designated for eventual replacement will only receive repairs essential for the health and safety of the occupants.

(iii) Project funds will be used to rehabilitate HUD assisted houses only when the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the Area ONAP. In emergency situations the Area ONAP administrator may grant exceptions to this requirement on a case-by-case basis.

(iv) Houses that have received comprehensive rehabilitation assistance from any ICDBG or other Federal grant program within the past 8 years will not be assisted with ICDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

(2) *Grant limits.* Rehabilitation grant limits for each Area ONAP jurisdiction are as follows:

(i) Eastern/Woodlands	$15,000
(ii) Southern Plains	$20,000
(iii) Northern Plains	$33,500
(iv) Southwest	$35,000
(v) Northwest	$25,000
(vi) Alaska	Lesser of $45/sq.ft. or $35,000

(c) *Selection Criteria for Rehabilitation Projects.*

(1) *Project Need and Design.* (45 points)

(i) The percentage of ICDBG funds committed to bring the houses to be assisted up to a standard condition as defined by the applicant. Administrative, planning, and technical assistance expenditures are excluded in computing the percentage of ICDBG funds committed to bring the houses up to a standard condition. The percentage of ICDBG funds not used to bring the houses up to a standard condition must be used for emergency repairs, demolition of substandard units or another purpose closely related to the housing rehabilitation project.

Percentage of ICDBG funds committed to bring houses to be assisted up to a standard condition:

91–100%	20 points
81–90.9%	15 points
80.9 and less	0 points

(ii) The applicant's selection criteria which are included in the application give first priority to the neediest households. ''Neediest'' is defined as households whose houses are in the greatest disrepair (but still suitable for rehabilitation treatment) in the project area, or very low-income households.

YES	10 points
NO	0 points

(iii) (A) Documentation of project need with a housing survey of all of the houses to be rehabilitated with ICDBG funds. This survey should include standard housing data on each house surveyed (e.g., age, size, type, number of rooms, number of habitable rooms, number of bedrooms/sleeping rooms, type of heating). The survey should indicate the deficiencies for each house. *A definition of ''suitable for rehabilitation'' must be included.* At a minimum, this definition must not include houses that need only minor repairs, or houses that need such major repairs that rehabilitation is structurally or financially infeasible.

(B) The application contains all the required survey data and the required definition of ''suitable for rehabilitation.'' (15 points)

(C) The application does not contain the required definition of ''suitable for rehabilitation'' and/or all the survey data, but does contain sufficient data to enable the project to proceed effectively. (10 points)

(D) The application does not contain survey data *or* the survey data it does contain is not sufficient to enable the project to proceed effectively. (0 points)

(2) *Planning and Implementation.* (50 points)

(i) *Rehabilitation Policies and Procedures including:*

(A) *Adopted rehabilitation standards.* The rehabilitation standards adopted by the applicant will ensure that after rehabilitation the houses assisted will be in a standard condition.

YES	5 points
NO	0 points

(B) *Rehabilitation selection policies and procedures.* (*1*) The rehabilitation selection policies and procedures contained in the application include:

(*i*) Property selection standards;

(*ii*) Cost limits;

(*iii*) Type of financing (e.g., loan or grant);

(*iv*) Homeowner costs and responsibilities;

(*v*) Procedures for selecting households to be assisted; and,

(*vi*) Income verification procedures.

(*2*) The application contains all the rehabilitation selection policies and procedures listed above. (10 points)

(*3*) The application does not contain all the rehabilitation selection policies and procedures listed above, but contains sufficient data to enable the project to proceed effectively *or* the application contains all the rehabilitation selection policies and procedures listed above, but in insufficient detail. (5 points)

(*4*) The application does not contain the rehabilitation selection policies and procedures listed above *or* if it does contain policies and procedures, they are not sufficient to enable the project to proceed effectively. (0 points)

(C) *Project implementation policies and procedures.* (*1*) These policies and procedures must include a description of the following items:

(*i*) The qualifications which will be required of the inspector;

(*ii*) The inspection procedures to be used;

(*iii*) The procedures to be used to select the contractor or contractors;

(*iv*) The manner in which the households to be assisted will be involved in the rehabilitation process;

(*v*) How disputes between the households to be assisted, the contractors and the applicant will be resolved; and, if applicable,

(*vi*) The repayment provisions which will be required if sale of the assisted house occurs prior to 5 years after the rehabilitation work has been completed.

(*2*) The application contains all the policies and procedures listed above, and they will enable the project to be effectively implemented. (10 points)

(*3*) The application contains some but not all of the policies and procedures listed above and these policies and procedures are sufficient for the project to proceed effectively. (5 points)

(*4*) The application does not contain the policies and procedures listed above. (0 points)

(*ii*) *Post rehabilitation maintenance policies that address counseling and training assisted households on maintenance.* (A) The policies included in the application contain a well-planned counseling and training program. Training will be provided for assisted households, and provision is made for households unable to do their own maintenance (e.g., elderly and persons with disabilities).

(B) The policies include follow-up inspections after rehabilitation is completed to ensure the house is being maintained. (5 points)

(C) The policies contain a well-planned home maintenance training and counseling program but fail to adequately address all of the items listed above. (3 points)

(D) The application does not contain a well-planned home maintenance training and counseling program. (0 points)

(*iii*) *Quality of cost estimates.* (A) Cost estimates have been prepared by a qualified individual (Qualifications of the estimator must be included in the application). Costs of rehabilitation are documented on a per house basis and are supported by a work write-up for each house to be assisted. The work write-ups are based upon making those repairs necessary to bring the houses to a standard condition in a manner consistent with adopted construction codes and requirements. The write-ups must be submitted with the application.

If national standards (e.g., the Uniform Building Code) have been locally adopted as the construction codes and requirements, they must be referenced. If locally developed and adopted codes and requirements are used, they must be submitted. (15 points)

(B) Cost estimates have been prepared for each house to be rehabilitated to determine the total rehabilitation cost. The cost estimates are included in the application. Costs to rehabilitate each house are documented by a deficiency list. (12 points)

(C) Cost estimates have been prepared and are included in the application but the estimates are based on surveys and not on individual house deficiency lists. (5 points)

(D) Cost estimates are not included in the application *or* the basis for the cost estimates included is inappropriate or not provided. (0 points)

(iv) *Cost effectiveness of the rehabilitation program.* (A) This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed rehabilitation will bring the houses to be assisted to a standard condition in an efficient and cost effective manner.

(B) Rehabilitation project is cost effective. (5 points)

(C) Rehabilitation project is not cost effective. (0 points)

(3) *Leveraging.* (5 points)

Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
25 and over	5
20–24.9	4
15–19.9	3
10–14.9	2
5–9.9	1
0–4.9	0

(d) *Thresholds for Land to Support New Housing.* (1) The application contains information and documentation which establishes that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low and moderate income households with documented housing needs.

(2) Housing assistance needs must be clearly demonstrated and documented with either a survey that identifies the households to be served, their size, income levels and the condition of current housing or an IHA approved waiting list. *The survey or waiting list must be submitted with the application.*

(e) *Selection Criteria for Land to Support New Housing.*

(1) *Project Need and Design.* (40 Points)

Information included in the application establishes that:

(i) The applicant has no suitable land for the construction of new housing and the necessary infrastructure and amenities for this housing. (40 points); or,

(ii) The applicant has land suitable for housing construction and needed infrastructure and amenities, but the land is officially dedicated to another purpose. (30 points); or,

(iii) The applicant will be acquiring land for housing construction and the construction of needed infrastructure and amenities for both new and existing housing. (25 points); or,

(iv) The applicant will be acquiring land for the construction of amenities for existing housing. (15 points); or,

(v) The reason for the land acquisition does not meet any of the criteria listed above. (0 points)

(2) *Planning and Implementation.* (60 points)

(i) *Suitability of land to be acquired.* A preliminary investigation has been conducted by a qualified entity independent of the applicant. Based on this investigation (*which must be submitted with the application*), the land appears to meet all applicable requirements:

(A) Soil conditions appear to be suitable for individual and/or community septic systems or other acceptable methods for waste water collection and treatment have been identified.

(B) The land has adequate:

(*1*) Availability of drinking water;

(*2*) Access to utilities;

(*3*) Vehicular access;

(*4*) Drainage;

(C) The land appears to comply with environmental requirements. Future development costs are expected to be consistent with other subdivision development costs in the area (subdivision development costs include the costs of the land, housing construction, water and sewer, electrical service, roads, and drainage facilities if required).

YES.....20 points
NO.....0 points

(ii) *Housing resources.* (A) Evidence of a conditional commitment for at least 25 percent of the housing units to be built on the land proposed for acquisition or evidence that an approvable application for these units has been submitted has been included in the application. (10 points)

(B) The evidence required for the award of 10 points has not been included in the application. (0 points)

(iii) *Availability/accessibility of supportive services and employment opportunities.* Documentation is provided in the application to indicate that upon completion of construction of the housing to be built on the land to be acquired, fire and police protection will be available to the site and medical and social services, schools, shopping, and employment opportunities will be accessible from the site according to the community's established norms.

YES.....5 points
NO.....0 points

(iv) *Commitment that households will move into the new housing.* Documented commitment from households that they will move into the new housing to be built on the land to be acquired is included in the application.

YES.....5 points
NO.....0 points

(v) *Land to trust status.* (A) Land can be taken into trust or provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust or the applicant must demonstrate the financial capability and commitment to pay the property taxes and fees on the land for any period of time during which it anticipates it will own the property in fee. This commitment must be in the form of a resolution by the governing body of the applicant which indicates that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

(B) Documentation from the BIA that land can be taken into trust or the required governing body resolution is included in the application. (5 points)

(C) Either the assurance or the resolution are missing from the application or they are inadequate. (0 points)

(vi) *Infrastructure commitment.* (A) A plan or commitment for any infrastructure needed to support the housing to be built on the land to be acquired has been included in the application. The plan or commitment must address water, waste water collection and treatment, electricity, roads, and drainage facilities necessary to support the housing to be developed.

(B) Financial commitments for all necessary infrastructure have been included in the application or documentation is included which demonstrates that all necessary infrastructure is in place. (10 points)

(C) A plan for the provision of all necessary infrastructure is included in

the application but all financial commitments required to implement the plan have not been submitted. (5 points)

(D) Neither a financial commitment or plan are included in the application. (0 points)

(vii) *The extent to which the site proposed for acquisition meets the housing needs of the applicant and is reasonably priced.* The application includes documentation which indicates that the applicant has examined and assessed the appropriateness of alternative sites and which demonstrates that the site proposed for acquisition best meets the documented housing needs of tribal households. The application must include comparable sales data which shows that the cost of the land proposed for acquisition is reasonable.

Yes.....5 points
No.....0 points

(f) *Thresholds for New Housing Construction.* The following thresholds and the selection criteria set forth in paragraph (g) of this section apply to new housing construction to be implemented through a Community-Based Development Organization (CBDO) as provided for under 24 CFR 953.204. *Please note that all households to be assisted under a new housing construction project must be of low or moderate income status.*

(1) New housing construction can only be implemented through a Community-Based Development Organization (CBDO). Eligible CBDOs are described in 24 CFR 953.204(c). The applicant must provide an assurance that it understands this requirement.

(2) *Documentation which supports the following determinations must be included in the application:*

(i) No other housing is available in the immediate reservation area that is suitable for the households to be assisted;

(ii) No other funding sources can meet the needs of the household(s) to be served.

(iii) The house occupied by the household to be assisted is not in standard condition and rehabilitation is not economically feasible, or the household is currently in an overcrowded house [sharing house with another household(s)], or the household to be assisted has no current residence.

(3) All applicants for new housing construction projects shall adopt construction standards and construction policies prior to submitting an application. Applicants must identify the building code to be used when constructing the houses and must document that this code has been adopted. The building code may be a tribal building code or a nationally recognized model code. If it is a tribal code it must regulate all of the areas and subareas identified in 24 CFR 200.925b, and it must be reviewed and approved by the Area ONAP. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925c.

(4) The applicant must provide an assurance that any house to be constructed will be the permanent non-seasonal residence of the household to be assisted; this household must live in the house at least nine months per year.

(g) *Selection Criteria for New Housing Construction.*

(1) *Project Need and Design.* (45 points)

(i) *IHA member/assistance.* (A) The application includes documentation which establishes that the applicant either is not served by an Indian Housing Authority (IHA), or if it is a member of an umbrella IHA, this IHA has not provided assistance to the applicant in a substantial period of time, or the IHA serving the applicant has not received HUD Public and Indian Housing new construction assistance in a substantial period of time due to limited HUD appropriations. The period of time during which the IHA serving the applicant has not received funding for inadequate or poor performance by the applicant does not count towards the period of time that no assistance has been provided by HUD.

(B) No assistance from IHA for 10 years or longer. (15 points)

(C) No assistance from IHA for 6–9 years, 11 months. (10 points)

(D) No assistance from IHA for 0–5 years, 11 months. (0 points)

(ii) *Adopted housing construction policies and plan.* (A) The plan must include a description of the proposed CBDO and its relationship (or proposed relationship) to the applicant. In addition, the policies and plan must include:

(*1*) A selection system that gives priority to the neediest households. Neediest shall be defined as households whose current residences are in the greatest disrepair, or very low-income households, or households without permanent housing.

(*2*) A system effectively addressing long-term maintenance of the constructed houses.

(*3*) Estimated costs and identification of the entity responsible for paying utilities, fire hazard insurance and other normal maintenance costs.

(*4*) Policies governing ownership of the houses, including the status of the land.

(*5*) Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.

(*6*) Policies governing disposition or conversion to non-dwelling uses of substandard houses that will be vacated when a replacement house is provided.

(B) The policies and plan include all of the information listed above. (20 points)

(C) The policies and plan do not include all of the information listed above, but do include sufficient information to allow the project to proceed effectively *or,* all of the information is included, but in insufficient detail. (10 points)

(D) The information included in the application is not sufficient to meet the requirements for the award of 10 points. (0 points)

(iii) *Beneficiary identification.* (A) Households to be assisted are identified in the application and their income eligibility and household size are documented. (10 points)

(B) Households to be assisted are not identified or, if identified, their income eligibility and household size are not documented. (0 points)

(2) *Planning and Implementation.* (45 points)

(i) *Occupancy Standards.* (A) The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying household (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room). *The standards must be submitted with the application.*

(B) Applicant has adopted reasonable occupancy standards which are included in the application. (10 points)

(C) Applicant has not adopted reasonable occupancy standards or the standards were not included in the application. (0 points)

(ii) *Site Acceptability.* (A) The applicant (or the proposed beneficiary household) has control of the land upon which the houses will be built. The application includes documentation that all housing sites are in trust or documentation from the BIA that the sites will be taken into trust within one year of the date of the ICDBG approval notification. If the sites are not in trust by the date of ICDBG approval notification, documentation that they are in trust must be provided to the Area

ONAP before ICDBG funds may be obligated for construction.

(B) A preliminary investigation of the site(s) has been conducted by a qualified entity independent of the applicant. Based on this investigation *(which must be included in the application)* the site(s) appear to meet all applicable requirements:

Soil conditions appear to be suitable for individual or community septic systems or other acceptable methods for waste water collection and treatment have been identified;

(*1*) Each site has adequate:

(*2*) Availability of drinking water

(*3*) Access to utilities

(*4*) Vehicular access

(*4*) Drainage;

(5) Each site appears to comply with environmental requirements.

YES.....15 points
NO.....0 points

(iii) *Energy Conservation Design.* The application includes documentation which demonstrates that the proposed houses have been designed in a manner which will ensure that energy use will be no greater than that for comparable houses in the same general geographic area that have been constructed in accordance with applicable state energy conservation standards for residential construction. Any special design features, materials, or construction techniques which enhance energy conservation must be described.

YES.....5 points
NO.....0 points

(iv) *Housing Survey.* (A) The applicant has completed a survey of housing conditions and housing needs of its tribal members. This survey was completed within the twelve month period prior to the application submission deadline (or if an earlier survey, it was updated during this time period). *The survey must be submitted with the application.* The following descriptive data is included for each household surveyed:

(*1*) Size of the household, inc. age and gender of any children.

(*2*) Is the household occupying permanent housing or is it homeless?

(*3*) Annual household income.

(*4*) Owner or renter.

(*5*) Number of habitable rooms and number of sleeping rooms.

(*6*) Physical condition of the house—standard/substandard. If substandard, is it suitable for rehabilitation? *A definition of ''suitable for rehabilitation'' must be included.*

(*7*) Number of distinct households occupying the house/degree of overcrowding.

(*8*) If there is a need for a replacement house, what are the housing preferences of the household, e.g. ownership or rental; location; manufactured or stick-built.

(B) An acceptable survey was submitted. (10 points)

(C) The survey submitted was not acceptable or no survey was submitted. (0 points)

(v) *Cost effectiveness of new housing construction.* (A) This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed housing activities will be accomplished in an efficient and cost effective manner.

(B) The applicant has demonstrated that the proposed activities are cost effective. (5 points)

(C) The applicant has not demonstrated that the proposed activities are cost effective. (0 points)

(3) *Leveraging.* (10 points)

Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

IX. Project Specific Thresholds and Selection Criteria for Community Facilities

(a) *Infrastructure Selection Criteria.*

(1) *Project Need and Design.* (60 points)

(i) *Meets an essential need.* (A) The application includes documentation which demonstrates that the proposed project meets an essential community development need by fulfilling a function that is critical to the continued existence or orderly development of the community.

(B) The proposed project will fulfill a function which is critical to the continued existence or orderly development of the community. (20 points)

(C) The proposed project will fulfill a function which is not critical to the continued existence or orderly development of the community. (0 points)

(ii) *Benefits the neediest.* (A) The proposed project benefits the neediest segment of the population, as identified below. Applications must include information which demonstrates that income data was collected in a statistically reliable and independently verifiable manner and that:

(B) 85 percent or more of the beneficiaries are low and moderate income. (15 points)

(C) Between 75–84.9 percent of the beneficiaries are low and moderate income. (10 points)

(D) Between 55–74.9 percent of the beneficiaries are low and moderate income. (5 points)

(E) Less than 55 percent of the beneficiaries are low and moderate income. (0 points)

(iii) *Provides infrastructure/health and safety.* (A) The application includes documentation which demonstrates that the proposed project will provide infrastructure that does not currently exist for the area to be served *or* it will eliminate or substantially reduce a health or safety threat or problem *or* it will replace existing infrastructure that no longer functions adequately to meet current needs.

(B) The infrastructure does not exist *or* the existing infrastructure no longer functions *or* the existing infrastructure does not contribute to the elimination of, or causes, a verified health or safety threat or problem. (25 points)

(C) The existing infrastructure no longer functions adequately to meet current needs *or* is unreliable. (20 points)

(D) The proposed project will replace or supplement existing infrastructure which is adequate for current needs but which will not meet acknowledged future needs. (12 points)

(E) The proposed project will replace or supplement existing infrastructure which is adequate to meet current needs and future needs have not been acknowledged or documented. (0 points)

(F) If the project is intended to address a health or safety threat or problem, the applicant must provide documentation consisting of a signed study or letter from a qualified independent authority which verifies that:

(*1*) A threat to health or safety (or a health or safety problem) exists which has caused or has the potential to cause serious illness, injury, disease, or death; and,

(*2*) The threat or problem can be completely or substantially eliminated if the proposed project is undertaken.

(2) *Planning and Implementation.* (30 points)

(i) *A viable plan for maintenance and operation.* (A) If the applicant is to assume responsibility for maintenance and operation of the proposed facility, the applicant must adopt a maintenance

and operation plan which addresses maintenance, repair and replacement of items not covered by insurance, and which clearly identifies operating responsibilities and resources. *This plan and the adopting resolution must be included in the application.* The plan must identify a funding source to ensure that the facility will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount the applicant will commit.

(B) If an entity other than the applicant commits to pay for maintenance and operation, a letter of commitment which identifies the responsibilities the entity will assume and which documents its financial ability to assume these responsibilities must be included in the application; submission of a maintenance and operation plan is not required. Points will only be awarded if the Area ONAP is able to determine that the entity is financially able to assume the costs of maintenance and operation.

(C) An acceptable maintenance and operation plan and adopting resolution (or letter of commitment) are included in the application. (15 points)

(D) The plan, resolution or the commitment letter have not been included in the application or if included they are not acceptable. (0 points)

(ii) *An appropriate and effective design, scale and cost.* (A) The application includes information which demonstrates that the proposed project is the most appropriate and cost effective approach to address the identified need. This information demonstrates that the use of existing facilities and resources, and alternatives, including method of implementation and cost, have been considered. If only one approach is feasible (there are no alternatives to the proposed project), the application must include an explanation.

(B) The required information is included in the application. (15 points)

(C) The required information is not included in the application or, if included, it is unacceptable. (0 points)

(3) *Leveraging.* (10 points)

Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

(b) *Threshold for Buildings.* An applicant proposing a facility which would provide health care services funded by the Indian Health Service (IHS) must assure that the facility meets all applicable IHS facility requirements. It is recognized that tribes that are contracting services from the IHS may establish other facility standards. These tribes must assure that these standards at least compare to nationally accepted minimum standards.

(c) Selection Criteria for Buildings. (1) *Project Need and Design.* (60 points)

(i) *Meets an essential need.* (A) The application includes documentation that the proposed building meets an essential community development need by providing space so that a service or function which is critical to the continued existence or orderly development of the community can be provided.

(B) The proposed building will provide space for a service or function which is essential to the continued existence or orderly development of the community. (20 points)

(C) The proposed building will provide space for a service or function which is not critical to the continued existence or orderly development of the community. (0 points)

(ii) *Benefits the neediest.* The proposed project benefits the neediest segment of the population, as identified below. Applications must include information which demonstrates that income data was collected in a statistically reliable and independently verifiable manner and that:

(A) 85 percent or more of the beneficiaries are low and moderate income. (10 points)

(B) Between 75–84.9 percent of the beneficiaries are low and moderate income. (8 points)

(C) Between 55–74.9 percent of the beneficiaries are low and moderate income. (5 points)

(D) Less than 55 percent of the beneficiaries are low and moderate income. (0 points)

(iii) *Provides building/health and safety.* (A) The application includes documentation which demonstrates that the proposed building will be used to provide services or functions which are not provided to service area beneficiaries *or* it will replace a building which does not meet health or safety standards which is currently being used to provide the service or function *or* it will replace a building which is no longer able to provide the space or amenities to meet the current need for the services or functions.

(B) The services or functions to be provided in the proposed building do not exist for the service area population *or* the building currently being used does not meet health or safety standards. (25 points)

(C) The building to be replaced by the proposed building is not able to provide the space or amenities for the services or functions so that current needs cannot be entirely met. (20 points)

(D) The building to be replaced is able to provide adequate space and current needs are being met but it cannot provide space for acknowledged future needs. (10 points)

(E) The proposed building is not necessary since current needs and acknowledged future needs can be met through the use of existing facilities. (0 points)

(F) If the proposed building is intended to replace an existing building which does not meet health or safety standards, the application must include documentation consisting of a signed letter from a qualified independent authority which specifically identifies the standard or standards which are not being met by the existing building.

(iv) *Multi-use/multi-benefit.* (A) Provides multiple uses or multiple benefits, or has services available 24 hours a day. The application must show that the proposed building will house more than one broad category of activity or that services would be provided out of the building 24 hours a day. *A written commitment for the use of the space must be included in the application.* ''Broad category'' means a single activity or group of activities which serves a particular group of beneficiaries (e.g., senior citizens) or meets a particular need (e.g., literacy). No one category of activity will occupy more than 75 percent of the available space for more than 75 percent of the time. Multipurpose buildings do not automatically meet these criteria, nor do buildings that provide a variety of activities for one client group.

(B) The proposed building will provide multiple uses or benefits or will have services available 24 hours/day *and* a commitment for the use of the space is included in the application. (5 points)

(C) The proposed building will not provide multiple benefits or services or will not have services available 24 hours a day *or* the application does not include a commitment for the use of the space. (0 points)

(2) *Planning and Implementation.* (30 points)

(i) *A viable plan for maintenance and operation.* (A) If the applicant is to assume responsibility for the maintenance and operation of the proposed building, the applicant must adopt a maintenance and operation plan which addresses maintenance, repair and replacement of items not covered by insurance, and which clearly identifies operating responsibilities and resources. *This plan and the adopting resolution must be included in the application.* The plan must identify a funding source to ensure that the building will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount the applicant will commit.

(B) If an entity other than the applicant commits to pay for maintenance and operation, a letter of commitment which identifies the responsibilities the entity will assume and which documents its financial ability to meet these responsibilities must be included in the application; submission of a maintenance and operation plan is not required. Points will only be awarded if the Area ONAP is able to determine that the entity is financially able to assume the costs of maintenance and operation.

(C) An acceptable maintenance and operation plan and adopting resolution (or letter of commitment) are included in the application. (15 points)

(D) The plan, resolution or the commitment letter have not been included in the application, or if included, they are not acceptable. (0 points)

(ii) *An appropriate and effective design, scale and cost.* (A) The application includes information which demonstrates that the proposed building is the most appropriate and cost effective approach to address the identified need(s). This information demonstrates that the use of existing facilities and resources and alternatives, including method of implementation and cost, have been considered. If only one approach is feasible (there are no alternatives to the proposed building), the application must include an explanation.

(B) The required information is included in the application. (15 points)

(C) The required information is not included in the application or, if included, it is unacceptable. (0 points)

(3) *Leveraging.* (10 points)

Points under this component will be awarded based on the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of Project Cost	Points
25 or more	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

X. Project Specific Thresholds and Selection Criteria for Economic Development

(a) *Thresholds for Economic Development.* (1) Economic development assistance may be provided only when a financial analysis is provided which shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project.

(2) The analysis should also establish that to the extent practicable: reasonable financial support will be committed from non-Federal sources prior to disbursement of Federal funds; any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and, that grant funds used for the project will be disbursed on a pro-rata basis with amounts from other sources. In addition, it must be established that the project is financially feasible and has a reasonable chance of success.

(b) *Selection Criteria for Economic Development.*

(1) *Organization.* (8 points)

(A) The application contains information and documentation which addresses all of the following three elements (Maximum: 8 points):

(*1*) The applicant (or entity to be assisted) has an established organization system for operation of a business, (e.g., adopted tribal ordinances, articles of incorporation, Board of Directors in place, tribal department).

(*2*) Formal provisions exist for separation of government functions from business operating decisions. An operating plan has been established and is submitted.

(*3*) The Board of Directors consists of persons who have prior business experience. A staffing plan has been developed and is submitted.

(B) The application contains all of the first element listed above, and some of the items in the second and third elements *or*, the application contains all of the elements listed above, but in insufficient detail. The business should be able to operate effectively. (Moderate: 5 points)

(C) The application does not meet the criteria for the award of moderate points. (Unsatisfactory: 0 Points)

(2) *Project Success.* (45 points)

The project will be rated on the adequacy and quality of the information included in the application which addresses the following criteria: *ANY PROJECT NOT RECEIVING AT LEAST MODERATE POINTS IN EACH OF THE FOLLOWING THREE RATING FACTORS WILL NOT BE CONSIDERED FOR FUNDING.*

(i) *Market analysis.* (A) A feasibility/market analysis, generally not older than two years, which identifies the market and demonstrates that the proposed activities are highly likely to capture a fair share of the market. *The analysis must be submitted with the application.* (Maximum: 15 points)

(B) A feasibility/market analysis which identifies the market and demonstrates that the proposed activities are reasonably likely to capture a fair share of the market. *The analysis must be submitted with the application.* (Moderate: 10 points)

(C) The submission does not meet the criteria for the award of moderate points. (Unsatisfactory: 0 points)

(ii) *Management capacity.* (A) A management team with qualifying specialized training or technical/managerial experience in the operation of a similar business has been identified. *Job descriptions of key management positions as well as resumes showing qualifying specialized technical/managerial training or experience of the identified management team must be submitted with the application.* (Maximum: 15 points)

(B) A management team with qualifying general business training or experience will be hired if the grant is approved. *Job descriptions of key management positions must be submitted with the application.* (Moderate: 12 points)

(C) The submission does not meet the criteria for the award of 12 points. (Unsatisfactory: 0 points)

(iii) *Financial Analysis of the Business.* (A) The financial viability of a project will be determined by an analysis of financial and other project related information. *For all proposed projects, the following must be submitted:*

(*1*) A detailed cost summary for the project;

(*2*) Evidence of funding sources;

(*3*) Five year operating or cash flow financial projections. If the project involves the expansion of an existing business, financial statements for the most recent three year period for the

business must also be submitted with the application (financial statements include the balance sheet, income statement and statement of retained earnings). For start-up businesses that will not be owned by the grantee, current financial or net worth statements of principal business owners or officers must also be submitted with the application.

(B) The information derived from the analysis will be reviewed and compared to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall financial viability. In determining whether a project is financially viable, the Area ONAP will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets and the ratio of net profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. Local standards may also be used. *If one of these standards is cited by the applicant, the appropriate data must be submitted with the application.*

(C) Based on the analysis:

(*1*) The project has an excellent chance of achieving financial success. (Maximum: 15 points)

(*2*) The project has an average chance of achieving financial success. (Moderate: 8 points)

(*3*) The project has a minimal prospect of achieving financial success. (Unsatisfactory: 0 points)

(*3*) *Leveraging.* Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of Project Cost	Points
30% or more	12
20–29.9%	8
10–19.9%	4
less than 10%	0

(4) *Permanent Full-Time Equivalent Job Creation and Training.* (20 points). (A) The total number of permanent full-time equivalent jobs expected to be created and/or retained as a result of the project as well as a summary of job descriptions must be identified or included in the application. Retained jobs will not be counted unless clear evidence is provided that these jobs would be lost without the project. The number and kind(s) of jobs expected to be available to low and moderate income persons must be identified.

(B) *ICDBG cost per job:*

$30,000 or less .....15 points
$30,001–40,000.....12 points
$40,001–45,000.....8 points
$45,001+ .....0 points

(C) *Quality of jobs and/or training targeted to low and moderate income persons:*

(*1*) The jobs offer wages and benefits comparable to area wages and benefits for similar jobs, provide opportunity for advancement, and teach a transferable skill; *OR*

(*2*) The employer commits to provide training opportunities. *A description of the planned training program must be submitted with the application.*

YES.....5 points
NO .....0 points

(5) *Additional Considerations.* (15 points)

A project must meet three of the following criteria to receive 15 points. (Maximum: 15 points)

(A) Use, improve or expand members' special skills. Special skills are those that members have developed through education, training or traditional cultural experiences.

YES.....5 points
NO .....0 points

(B) Provide spin-off benefits beyond the initial economic development benefits to employees or to the community.

YES.....5 points
NO .....0 points

(C) Provide special opportunities for residents of Federally-assisted housing.

YES.....5 points
NO .....0 points

(D) Provide benefits to other businesses owned by Indians or Alaska natives.

YES.....5 points
NO .....0 points

(E) Loan Repayment/Reuse of ICDBG funds. If the business is not tribally owned, at least 50% of the ICDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribally owned, the tribe agrees (by submission of a tribal resolution) within a 10 year period to use funds equal to 50% of the ICDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribally owned business.

YES.....5 points
NO .....0 points

XI. Error and Appeals

Rating panel judgements made within the provisions of this NOFA and the program regulations (24 CFR 953) are not subject to claims of error. Applicants may bring arithmetic errors in the rating and ranking of applications to the attention of an Area ONAP within 30 days of being informed of their score. If an Area ONAP makes an arithmetic error in the application review and rating process which, when corrected, would result in the award of sufficient points to warrant the funding of an otherwise approvable project, the Area ONAP may fund that project in the next funding round without further competition.

XII. Findings and Certifications

Paperwork Reduction Act. The information collection requirements contained in this Notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0191. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Environmental Impact. This NOFA provides funding under, and does not alter environmental requirements of regulations in 24 CFR part 953. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Recipient Compliance with Environmental Requirements. In accordance with 24 CFR 953.605, a recipient must comply with the environmental review requirements of 24 CFR part 58, including limitations on the commitment of project funds before submission of a request for release of funds.

Federalism Executive Order. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this NOFA will not have substantial, direct effects on states, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to Indian tribes and Alaska native villages, none of its provisions will have an effect on the relationship between the Federal Government and the states or their political subdivisions.

Family Executive Order. The General Counsel, as the Designated Official for Executive Order 12606, *The Family,* has determined that the policies announced

in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being and thus not subject to review under the Order.

Prohibition of Advance Disclosure of Funding Decisions. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of the applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have ethics related questions should contact HUD's Ethics Law Division (202) 708–3815. (This is not a toll-free number.)

Economic Opportunities for Low and Very Low Income Persons. All applicants are herein notified that the provisions of section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations in 24 CFR part 135 are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. Tribes that receive HUD assistance described in this part shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b).

Prohibition Against Lobbying Activities. Applicants for funding under this NOFA are subject to the provisions of Section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. Section 1352 (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995, P.L. 104–65 (December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR Part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal Executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted. The certification and the SF-LLL are included in the application package.

The Lobbying Disclosure Act of 1995, P.L. 104–65 (December 19, 1995), which repealed Section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR Part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Section 102 of the HUD Reform Act—Documentation, Access, and Disclosure. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(a) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(b) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Catalog of Federal Domestic Assistance Number.

(The Catalog of Federal Domestic Assistance Number for the ICDBG Program is 14.862)

Dated: April 2, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–9307 Filed 4–10–97; 8:45 am]

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federal register

Friday
April 11, 1997

Part VI

Department of Housing and Urban Development

Funding Availability (FY 1997) for Indian Applicants Under the HOME Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4183–N–01]

Notice of Funding Availability (NOFA) for Fiscal Year 1997 for Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1997 for Indian Applicants for HOME Investment Partnerships Act (the HOME Act) programs, referred to as the HOME program.

SUMMARY: This NOFA announces the availability of up to $21,000,000 in funding for Fiscal Year (FY) 1997 for the HOME Program for Indian tribes; provides the selection criteria; provides information on how to apply; and explains how selections will be made. All eligible applicants are invited to submit applications for HOME funds in accordance with the requirements of this NOFA.

DATES: Application Due Date: June 20, 1997. Applications must be RECEIVED by the Area Office of Native American Programs (Area ONAP) having jurisdiction over the applicant on or before 3:00 P.M. (Area ONAP local time) on June 20, 1997. This application deadline is firm as to date and hour. The Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile (''FAX'') copies shall not be accepted.

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the appropriate Area ONAP. Refer to Appendix 1 of this NOFA for a complete list of Area ONAPs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection requirements contained in these application procedures for HOME funds were reviewed by the Office of Management and Budget and approved under OMB control number 2577–0191. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Toward this end, the Department in recent years has developed the Consolidated Planning process designed to help communities undertake such approaches.

In this spirit, it may be helpful for applicants under this NOFA to be aware of other related HUD NOFAs that have recently been published or are expected to be published in the near future. By reviewing these NOFAs with respect to their program purposes and the eligibility of applicants and activities, applicants may be able to relate the activities proposed for funding under this NOFA to the recent and upcoming NOFAs and to the community's Consolidated Plan. While tribes and Indian housing authorities are not required to execute a Consolidated Plan, comprehensive planning by tribes is encouraged.

Elsewhere in today's **Federal Register**, the Department is publishing the following related NOFAs: the NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages; and the NOFA for Block Grant Program for Indian Tribes and Alaskan Native Villages. The Department expects to publish within the next few weeks the NOFA for Indian Housing Development.

To foster comprehensive, coordinated approaches by communities, the Department intends for the remainder of FY 1997 to continue to alert applicants to upcoming and recent NOFAs as each NOFA is published. In addition, a complete schedule of NOFAs to be published during the fiscal year and those already published appears under the HUD Homepage on the Internet, which can be accessed at http://www.hud.gov/nofas.html. Additional steps on NOFA coordination may be considered for FY 1998.

For help in obtaining a copy of your community's Consolidated Plan, please contact the community development office of your municipal government.

Changes From Last Year's NOFA

1. *ERRORS.* This year the extent of an error is clarified to make explicit that only an arithmetic error may be corrected and then only by the Area ONAP Administrator.

2. *PROJECT GRANT AMOUNT.* The maximum grant amount per applicant is either $2.0 million or the amount allocated to the applicant's Area ONAP office, whichever is less.

3. *LIMIT ON GRANTS THAT ARE NOT CLOSED OUT.* An applicant may not have more than two HOME grants at a time. An application from an applicant with two or more HOME grants that are not closed out pursuant to the requirements of § 954.504 will be set aside and not rated.

4. *60 POINT APPLICATION ELIGIBILITY REQUIREMENT.* After rating, a project must receive at least 60 points to be considered for funding.

I. Purpose and Substantive Description

(a) Authority

The HOME Investment Partnerships Act (the HOME Act) (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625), and created the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the Indian HOME program are codified at 24 CFR part 954.

The HOME Act was amended by the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) and the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 102–233, approved April 11, 1994).

(b) Allocation Amounts

(1) *Fiscal Year 1997 Funding.* The Departments of Veterans' Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 appropriated $1.4 billion for the HOME program of which 1.5 percent was designated as an Indian Tribes set-aside. For the fiscal year ending September 30, 1997, $21 million is available for the Indian HOME program.

HOME funds will be allocated to the Area ONAPs as follows:

1. Eastern/Woodlands ONAP	$1,554,550
2. Southern Plains ONAP	3,956,950
3. Northern Plains ONAP	3,305,650
4. Southwest ONAP	9,370,150
5. Northwest ONAP	1,137,250
6. Alaska ONAP	1,675,450
Total	21,000,000

(2) *Project Grant Amount.* The maximum grant amount per applicant is either $2.0 million or the amount allocated to the applicant's Area ONAP office, whichever is less. Grants may be funded at less than applied for levels. In determining appropriate grant amounts to be awarded, the Area ONAP may take into account the level of demand, the scale of the activity proposed relative to need, the number of persons to be served, and the amount of funds required to achieve project objectives.

(3) If an insufficient number of fundable applications is received in any one Area ONAP, any surplus funds may be assigned to other Area ONAPs which have unfunded fundable applications.

(c) Eligibility

(1) *Eligible Applicants.* (i) Eligible applicants for HOME funds for Indian tribes are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(ii) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply for funds under this NOFA on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that Act when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs or Indian Health Service.

(iii) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(iv) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (i) of this section, or as a Tribal organization, as provided in paragraph (ii) of this section, by the application submission date.

(v) Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively. An applicant must submit a determination by an OIG or non-federal auditor that the applicant has adequate accounting/administrative control. An applicant that has participated in the Indian HOME program must have performed adequately. In cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance prior to submitting an Indian HOME application to HUD. Examples of deficient performance may include; not being current in meeting its audit responsibilities, unresolved serious audit findings and failure to initiate a previous grant. The Area ONAP will determine whether or not a grantee is eligible to participate in a particular funding round.

(2) *Eligible Projects.*

(i) *Size and Location of a Project.* A ''project'' may be located on one or more sites. The applicant must identify the scale and location of a project, provide a geographical description of the operating area of the applicant and show that the project is within the operating area of the applicant. A project may be as small as one site or as large as the operating area of the tribe. (NOTE: For purposes of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), the term ''project'' means one or more activities paid for in whole or in part with HUD financial assistance. Two or more activities that are integrally related, each essential to the other, are considered one project.)

(ii) *Categories of Eligible Projects.* In accordance with 24 CFR 954.105, projects that may be funded under the HOME Indian program include: (A) housing rehabilitation (moderate and substantial), (B) acquisition of housing, and (C) new housing construction. These project types may also include site improvements and relocation. A project may be for rental or homeownership.

(A) A rehabilitation project consists of only rehabilitation, or includes acquisition of units with rehabilitation.

(B) An acquisition project consists of the acquisition of standard units not requiring rehabilitation.

(C) A new construction project consists of new construction of housing and may include acquisition and demolition.

(3) *Eligible Activities.* Eligible activities, in accordance with 24 CFR 954.300, are as follows:

(i) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; and to pay administrative costs. The specific eligible costs for these activities are set forth in § 954.303.

(ii) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

(iii) Site improvements must be in keeping with improvements of surrounding, standard projects. Site improvements include roads, streets, sidewalks, curbs, gutters, and connections to utilities, such as storm and sanitary sewers, water supply, gas, and electricity. The ''site'' of the improvements may include property adjacent or near the immediate site of the housing if this property and the housing are owned by the same entity (e.g., the housing is owned—at least until sold to homebuyers—by the tribe and the housing and the improvements are located on a reservation). If the site improvements will benefit housing (existing or future) in addition to housing assisted with FY 1997 HOME Indian Program grant funds, only a pro-rated share of the site improvements may be charged to the HOME grant.

(4) *Multiple Projects.* An applicant may apply for grant assistance for more than one project. If so, each project is limited to no more than one category (i.e., acquisition, rehabilitation, new construction) and stands on its own. The total grant amount requested by the applicant may not exceed the maximum allowed. Each project will be rated independently and ranked independently. For each project grant request, where appropriate and to assure maximum point award, applicants must provide individual responses to application information requirements.

(d) Selection Criteria and Rating Factors

Each project submitted for grant funding shall be evaluated using the three criteria provided in 24 CFR 954.105, as more fully explained in sections I.(e)(1), (2), and (3) of this NOFA, below. See Figure 1. For an application to be considered for rating, ranking, and funding, all eligibility requirements must be addressed. *After rating, the project must receive at least 60 points* to be considered for funding.

The complete rating and ranking process is described in detail at section I.(e)(5) of this NOFA.

All the potential points which can be earned are summarized as follows:

Need and Design	30
Need	(15)
Need/Quantity/Documentation	4
Need/Quantity/Demographics	3
Responsiveness	3
Benefits	5
Project Feasibility	(15)
Planning and Implementation	40
Financial	(15)
Property/Cost/Ability to Pay	6
Cashflow thru Completion	3
Feasibility thru Affordability Period	3
Cost Effectiveness Test	3
Legal and Administrative	(10)
Staffing Plan during Implementation	(15)
Leveraging	30

HUD urges each applicant to screen its application using the Checklist of Eligibility Requirements and Application Submission Requirements to ensure that the application meets each requirement.

In responding to each of the components which address the selection criteria, HUD requests that each applicant:

—Use separate tabs for each selection criterion and sub-criterion. In order to be rated, make sure the response is beneath the appropriate heading.

—Keep its responses in the same order as the NOFA.

—Provide the necessary data and the explanation, not exceeding 200 words, that supports the response. Include all relevant material to a response under the same tab. Do not assume the reviewer will search for the answer or information to support the answer elsewhere in the application.

—Do a preliminary rating for its own project, providing a score according to the scoring guide. This will help to show the applicant how its project might be scored by the reviewers. It will also help to show the applicant whether the application meets the eligibility requirements and the minimum point score requirement (50 points), and where the strengths and weaknesses of the application are located. Then, the applicant can strengthen the weaker parts of the application and retain the stronger parts.

The HOME program is for *low-income and very low-income persons.* In the application, applicants must provide information on the median income for the community in which the proposed project is located. The low-income and very low-income limits for each applicant community are available from the Area ONAPs.

FIGURE 1.—INDIAN HOME PROGRAM SCORING

Selection criteria	Maximum points
Need and Design	30
Planning and Implementation	40
Leveraging	30

(1) NEED AND DESIGN—30 points maximum.

The first of the three criteria provided in 24 CFR 954.105 addresses the degree to which the application:

(a) Identifies the housing needs of the tribe,

(b) Describes the demographic characteristics of needy, very low and low-income families,

(c) Describes the characteristics of the homes to be provided,

(d) Is from an applicant with a high ratio of unmet need to total need, and

(e) Proposes homes which meet the requirements of the needy. This first criterion is divided into two parts that will be examined and evaluated separately. These parts are: (i) Need and (ii) Project Feasibility.

(i) Need—15 points maximum. The degree to which the proposed project addresses the housing need(s) of the tribe as identified in the documentation for the project. Tribal need must be documented. This documentation should include current IHA waiting lists, data on the degree of overcrowding, percentage of population in need of housing based upon census data, etc. Waiting lists from the IHA must identify whether the list is for rental housing or ownership housing, e.g., mutual help. An IHA waiting list for ownership housing is especially important if the proposed project contemplates the sale of units, e.g., new construction.

(A) Housing Need Expressed in Terms of Quantity (4 points maximum). The tribe shall express its housing needs within its reservation, service area, or area of operation by:

—The number of affordable units, as documented by the applicant;

—The size (number of bedrooms) of the needy households as documented by the applicant;

—The type of assistance needed, e.g., rehabilitation vs. new construction, as documented by the applicant; and

—The tenure type of the housing needed, i.e., homeownership or rental, as documented by the applicant.

Documentation that contains a recent formal survey prepared by a tribe, a State, the Federal government or a commission authorized by a tribe, a State, or the Federal government, or a recent formal survey authorized by a tribe, State, the Federal Government or a tribe authorized commission and actually performed by a third party, such as a consultant or university, shall receive four points. Documentation supporting housing need other than a formal survey shall receive 0 or 2 points depending upon the quality of the documentation presented. See Table 1.

TABLE 1.—SCORING GUIDE

Quantity of housing need—quality of documentation—[in points]		
Good	Fair	Unsatisfactory
4	2	0

(B) Demographic Information Regarding Indian Households in Need of Affordable Housing (3 points maximum). The demographic characteristics of low-income and very low-income Indian households that are in need of the housing identified in (A), above, shall quantify the number of Indian households and number of family members in the household, their age, and gender, as well as the number of households for which an accessible unit is needed. An application which contains this data shall receive 3 points. A current IHA waiting list may be used to supply this data. Waiting lists must identify whether the list is for rental housing or ownership housing, i.e., mutual help. A waiting list for ownership housing is especially important if the proposed project contemplates the sale of units, e.g., new construction.

Partial supporting documentation shall receive 2 points. If the documentation is unclear or missing entirely, 0 points. See Table 2.

TABLE 2.—SCORING GUIDE

Quantity of housing need—demographic characteristics—		
Complete or with correct IHA list (points)	Partial documentation (points)	Unclear or missing (points)
3	2	0

(C) Proposed Supply by Quantity, Size, Tenure, and Type (3 points maximum). Documentation in the application must identify the housing to be supplied by the proposed project. Supply must be described by the following characteristics:

—The number of affordable units to be provided;
—The size (number of bedrooms) of the units to be provided;
—The type of assistance to be provided, e.g., rehabilitation vs. new construction; and
—The tenure type of the housing to be provided, i.e., homeownership or rental.

An application that provides this information shall receive 3 points. An application that does not respond to all these requirements shall receive 2 or 0 points depending upon its responsiveness to this factor. See Table 3.

TABLE 3.—SCORING GUIDE

Responsiveness to housing supply factors		
Very responsive (points)	Fairly responsive (points)	Not responsive (points)
3	2	0

(D) Benefits to Very Low-Income and Low-Income Families of the Tribe (5 points maximum). Under this factor, the applicant with the larger ratio of unmet low-income and very low-income need for affordable housing receives more points. The ratio consists of a numerator, which is the number of very low-income and low-income families of the tribe in need of affordable housing divided by a denominator, which is the total number of very low-income and low-income families of the tribe. The result is multiplied by 5 to determine the number of points received under this criterion. The number of points should be rounded to 2 decimal places.

In the response to this criterion, the applicant may use data for ''members'' or ''families,'' whichever one is available. Whichever one is chosen, it must be used in both the numerator and the denominator of the ratio. If data is chosen for ''families,'' ''families'' must be used in both the numerator and denominator. The applicant must provide the source for the data. Failure to identify the source of the data will result in the loss of one point. See Table 4.

The total of all the low-income and very low-income families with unmet housing needs is the number that is considered for the numerator in the formula used in this criterion, regardless of the particular activity for which funding is sought in the application. The denominator is the total number of low-income and very low-income families of the tribe. For example, say:

—the total number of low-income and very low-income families of the tribe is 1,000,
—the applicant is applying for funds to rehabilitate 10 units, and
—there are 100 low-income and very low-income families in need of rehabilitated units,
—But the total number of low-income and very low-income families with housing needs of all types (rental, new construction, and rehabilitation) is 500.

Then, the number that would be used in the formula as the numerator is 500; the denominator is 1,000. If the project is mixed, that fact is of no consequence in using the formula. A mixed project may be mixed as to tenure of the families to be assisted, i.e., rental or home ownership, but it may not be mixed as to type of project activity, i.e., a combination of acquisition, rehabilitation, new construction.

For example, a tribe has 20 low-income and very low-income families in need of affordable housing and a total of 100 low-income and very low-income families. No source for the data is identified. Substitute these values in the formula:

$5 \times (20/100) =$

$5 \times 0.20 =$

1.00 point.

The formula results in a preliminary score of 1.00 point. Then, deduct one point because the source for the data is not given and the final point score for this item becomes zero.

TABLE 4.—SCORING GUIDE

Benefits to very low-income and low-income families
5 × (low-income and very low-income families in need of affordable housing/total of low-income and very low-income families). Round to 2 decimal places. Deduct 1 point if source of data is not provided.

(ii) Project feasibility. Match Between Demand and Supply by Characteristics.—15 points maximum. Project feasibility as measured here is the degree to which the characteristics of housing units in the proposed project are responsive to need of actual low-income and very low-income families for affordable housing that was identified in the previous evaluation factor. A project which provides a number of units with the appropriate characteristics less than or equal to the identified need will receive more points. A project which provides a number of units with the appropriate characteristics greater than the demand will receive less points. Thus, there is a penalty if supply is greater than demand. To evaluate the degree to which the proposed project addresses the housing needs of the tribe as identified in the application, points will be awarded based upon:

(A) The relationship between the number of affordable units to be provided as compared to the number needed, as documented by the applicant;

(B) The size (number of bedrooms) of the units to be provided relative to sizes of needy households as documented by the applicant;

(C) The type of assistance to be provided, e.g., rehabilitation vs. new construction, compared with the type of assistance necessary, as documented by the applicant; and

(D) The tenure type of the housing to be provided, i.e., homeownership or rental, compared with the type of assistance required, desired, or necessary as documented by the applicant, and;

(E) The project plan must indicate a schedule for the implementation of the expanded housing opportunities.

The documentation for a project shall receive 15 points if it: (1) shows that the quantity of housing units to be made available for very low-income and low-income families of the tribe is equal to or less than the demand, (2) shows that the sizes of the units to be made available meet but do not exceed the needs of the very low-income and low-income families, (3) shows that the type of assistance (rehabilitation, new construction) to be provided meets the type of assistance needed, (4) shows that the tenure type (ownership, rental) to be provided is the tenure type needed, and (5) describes the delivery schedule. The documentation for a project shall receive 8 points if it clearly responds to four of the five items. The documentation for a project shall receive 0 points if it does not clearly respond to four of the five items. See Table 5.

TABLE 5.—SCORING GUIDE

Match Between Proposed Supply and Documented Demand (points)		
Good	Fair	Unsatisfactory
15	8	0

(2) PLANNING AND IMPLEMENTATION—40 points maximum.

The second of the three criteria provided in 24 CFR 954.105 is: The degree to which the financial, legal, and administrative actions necessary to undertake the proposed project have been considered and addressed in the documentation for the project, and the degree to which the applicant has the administrative staff to carry out the project successfully. Applicants must be concrete and specific in describing the financial, administrative, and legal actions involved in carrying out the project, and must describe their own administrative capability, existing or planned, to carry out this project. The applicant must demonstrate, using complete cost and revenue estimates for the project, including loans if necessary, that the proposed project is financially feasible and meets the regulatory affordability requirements. This second criterion is divided into three parts that will be examined and evaluated separately. These three parts are: (i) Financial; (ii) Legal and Administrative Actions; and (iii) Staffing Plan during Implementation.

(i) Financial—15 points maximum.

(A) Property identification and comparison of project cost and ability of needy family to pay (6 points maximum). The applicant must demonstrate that the proposed very low- and low-income families who will be the owners or tenants shall be able to afford to buy or rent this housing in accordance with the affordability requirements under 24 CFR 954.306: ''qualification as affordable housing and income targeting: rental housing,'' and 24 CFR 954.307: ''qualification as affordable housing: home ownership.'' This evaluation is to include the results of market surveys for acquisition, rehabilitation, or new construction of housing and/or the identification of the actual properties to be acquired, rehabilitated, or constructed.

In addition to information concerning the supply of homes, the applicant must provide information to support the demand for homes. This market information must indicate that there is a demand for the type of tenure being proposed for the home at the price being proposed. If the project is for homeownership, what evidence is there that there is sufficient demand of interested and eligible applicants? Have applicants been identified? Selected? If the proposed applicants are renting, is there evidence they want to buy? Is there evidence they can afford to buy? As an indication of credit worthiness, have applicants been pre-qualified for a loan?

For all types of projects, but especially for an owner-occupied rehabilitation project, include a discussion of funding for routine maintenance and property taxes, which may increase due to an increase in the unit value, and energy conservation. Since the units to be rehabilitated with the HOME grant became substandard because they were not maintained, include a discussion of provisions to pay for training and education, and for major repair and replacement as a result of damage or loss through wear and tear. For example: After the unit is rehabilitated with this HOME grant, how will it be maintained? Are funds being set aside to maintain the unit? Whose funds are they—the owner's, tenant's, owner/occupant's? Is there a plan included in the application to address this? Will the applicant provide for energy efficient construction/rehabilitation which goes beyond regulatory requirements so as to minimize occupant expenditure for utilities? Will the applicant employ construction/rehabilitation techniques/materials which will help minimize the upkeep and maintenance costs to the occupant/owner? For scoring, see Table 6. Points will be awarded based upon the completeness and adequacy of responding to pertinent questions.

TABLE 6.—SCORING GUIDE

Property Identification and Cost vs. Ability To Pay (points)		
Good	Fair	Unsatisfactory
6	3	0

(B) Cash flow projection through project completion (3 points maximum). This requirement deals with the year by year cash flow for the proposed project. For example, for a new construction project by the applicant of a single family detached unit that is to be sold to a low income family that will occupy the unit, the cash flow projection would show the cost of construction, the construction payments, any equity or debt using HOME or non-HOME funds, any down payment and any mortgage loan made in the sale of the unit to the family, and the monthly mortgage payment and the source of funds to make those payments.

The applicant must provide a year-by-year cash flow projection which includes an estimate of all project costs and revenues. The project must be financially feasible from the start. The costs and the revenues must be realistic. The housing opportunities must be achievable for the amounts shown. The costs must not be unrealistically low, showing more product for less money.

There must be a projection of costs and revenues for the time the work is being carried out as well as the time of maintenance and repair. The costs and revenues projection identifies what the maintenance and repair and major replacement costs for the long term (i.e., not less than the minimum period of affordability, 24 CFR 92.614) are going to be and how they will be paid. The projection must identify what the costs and revenues are. If the source of revenue is a grant, the grant must be identified. The costs and revenues and the cash flow must cover the construction period and the marketing period (if there will be a marketing period); the period of maintenance and repair must be projected separately. The applicant must identify whether there is a need for short-term borrowing for rehabilitation or whether rehabilitation is paid for entirely from HOME and leveraged funds; any years of negative cash flow; and the cumulative negative cash flow. If the project requires financing, i.e., borrowing, to get through periods of negative cash flow, the applicant must show the financing in the cash flow projection. For scoring, see Table 7. Points will be awarded based on completeness in adequately addressing the pertinent questions.

TABLE 7—SCORING GUIDE

[In points]

Cash flow projection through project completion		
Good (points)	Fair (points)	Unsatisfactory (points)
3	2	0

(C) Financial feasibility during the affordability period (3 points maximum). This requirement deals with the financial feasibility of the housing during the affordability period beginning after project completion, i.e., after completion of the acquisition, rehabilitation, or new construction. The affordability period can be from 5 years to 20 years (24 CFR 954.306). The housing has costs and revenues throughout the affordability period. Identify all of the costs and revenues, year by year, and display them to ensure that all of the costs shall be paid by revenues reasonably anticipated to occur.

The housing must be financially feasible for the affordability period, while at the same time remaining affordable as prescribed by the requirements at 24 CFR 954.306 and 954.307. Arrangements to be made for long-term costs must be shown. If during this period developer borrowing is required to get through periods of cumulative negative cash flow, the applicant must show the borrowing. The applicant must show buyer mortgage payments, if any.

As costs occur for the units that are occupied (e.g., owner-occupied rehabilitation, or new construction of rental housing), the application must discuss who will pay those costs and how they will be paid; whether any borrowing will be involved; whether the owner is expected to make the payments and when the payments will occur. The costs and revenues for maintenance, repair, and major replacements must be included in the affordability period cash flow projection. For a rental project, the projection must include how the project management staffing costs described in the staffing plan will be paid. For scoring, see Table 8. Points will be awarded for completeness in addressing the pertinent questions.

TABLE 8.—SCORING GUIDE

Financial feasibility during the affordability period		
Good (points)	Fair (points)	Unsatisfactory (points)
3	2	0

(D) Cost effectiveness test (3 points maximum). The cost effectiveness test is related to leverage because the more non-HOME grant money brought to the project, the lower the amount of HOME grant money needed. The cost effectiveness test gives more points to projects that use less HOME funds. The cost effectiveness test also rewards projects which use HOME funds most efficiently. To score a project in the cost effectiveness test, a maximum allowable expenditure of HOME funds is identified for each project type with respect to the total development cost (TDC).

(*1*) Housing Rehabilitation. For rehabilitation projects, the maximum allowable expenditure of HOME funds shall be no more than 62.5% of the cost of new construction (i.e., no more than 62.5% of the TDC) for substantial rehabilitation (''substantial'' means an expenditure of $25,000 or more per home) and no more than 50% of the TDC of new construction for moderate rehabilitation. If the HOME assistance is less than 20% of the maximum allowable expenditure of HOME funds, the project receives 3 points; for 20% to 60%, 2 points; for 61% to 99%, 1 point. If it is 100% of the maximum allowable, the project receives 0 points. See Table 9.

(*2*) Acquisition. For acquisition projects, the maximum allowable expenditure of HOME funds shall be no more than 62.5% of the cost of new construction (i.e., no more than 62.5% of the TDC) if the property has been substantially rehabilitated and no more than 50% of the cost of new construction if the property has been moderately rehabilitated. If the HOME assistance is less than 20% of the maximum allowable amount, the project receives 3 points; for 20% to 60%, 2 points; for 61% to 99%, 1 point. If the HOME assistance is 100% of the maximum allowable amount, the project receives 0 points. See Table 9.

(*3*) New Construction. For new construction projects, the maximum allowable expenditure of HOME funds shall be less than or equal to 100% of the TDC. If the HOME assistance amount is less than 20% of the maximum allowable amount, the project receives 3 points; for 20% to 60%, 2 points; for 61% to 99%, 1 point. If the HOME assistance amount is 100% of the maximum allowable expenditure of HOME funds, the project receives 0 points. See Table 9.

TABLE 9.—SCORING GUIDE

Cost effectiveness test			
0% to 19% (pts.)	20% to 60% (pts.)	61% to 99% (pt.)	100% (pts.)
3	2	1	0.

(ii) Legal and Administrative Actions—10 points maximum. All policies, procedures, standards, criteria, and planning documents necessary for the type of project proposed must be included in the documentation for the project. Where rental housing is envisioned, this includes the tenant selection requirements for rental housing at 24 CFR 954.402(e). Where assistance for homeowners is contemplated, this includes the requirements for rehabilitation at 24 CFR 954.307. If the applicant is assisting homebuyers, the applicant must establish guidelines determined by HUD to be appropriate for the subsequent resale of the housing units, required under 24 CFR 954.307. Planning documents must include a discussion of steps that will be taken to ensure maintenance of housing quality throughout the affordability period. See Table 10. Points will be awarded based on the completeness of the application and sample documentation in addressing the pertinent factors:

(A) Housing Rehabilitation. Data submitted must include adopted rehabilitation policies, including adopted rehabilitation standards that meet applicable local codes and/or ordinances; maximum rehabilitation cost per unit; rehabilitation selection criteria; and project planning documents.

(B) Acquisition. Data submitted must include adopted standards for houses that shall be acquired, including maximum purchase price per unit;

participant selection criteria, and project planning documents.

(C) New Construction. Data submitted must include adopted standards for construction that meet applicable or local codes and ordinances and that meet HUD prescribed energy-efficiency standards; maximum cost per unit; participant selection criteria; and project planning documents.

TABLE 10.—SCORING GUIDE

Other legal and administrative		
Good (points)	Fair (points)	Unsatisfactory (points)
10	5	0

(iii) Staffing Plan—15 points maximum. The applicant must provide a staffing plan. The plan must relate the steps in the project execution timetable with the personnel skills required for this project.

(A) For a grantee administered project, the staffing plan must identify the key personnel skills and experience requirements for the particular steps in the execution of this project, and relate this information to the project timetable, i.e., during acquisition, rehabilitation, construction. In order to be properly rated, experience identified must demonstrate the ability of key personnel in relation to the tasks required. If an applicant does not currently have personnel which possess the skills and experience requirements, the application must state how the applicant intends to obtain personnel which do have the experience and skills, and provide a list of available people who do have the necessary experience and skills. Resumes which show the experience and skills of these people may also be included in the application. A staffing plan which relates tasks, time, and personnel skills will receive 15 points. If the personnel requirements are for individuals who are experienced in the administration/management of programs which are somewhat similar to, but not the same as, the proposed program, 7 points will be awarded. Failure to submit a staffing plan or the submission of a plan which identifies personnel requirements for individuals whose experience would not have prepared them for the administration/management of the proposed program will result in the award of 0 points. Points will be awarded in accordance with Table 11 below.

(B) If the tribe has an agreement for the tribal IHA (or any other entity) to implement the project, a copy of the agreement must be included, as well as a staffing plan of the IHA (or other entity), which includes the addition of this project, and a description of the impact on the entity due to administering this project. The staffing plan must identify the key personnel skills and experience requirements for the particular steps in the execution of this project, and relate this information to the project timetable, i.e., during acquisition, rehabilitation, construction. In order to be properly rated, experience identified must demonstrate the ability of key personnel in relation to the tasks required. A staffing plan which relates tasks, time, and personnel skills will receive 15 points. If the personnel requirements are for individuals who are experienced in the administration/management of programs which are somewhat similar to, but not the same as, the proposed program, 7 points will be awarded. Failure to submit a staffing plan or the submission of a plan which identifies personnel requirements for individuals whose experience would not have prepared them for the administration/management of the proposed program will result in the award of 0 points. Points will be awarded in accordance with Table 11 below.

TABLE 11—SCORING GUIDE

Staffing plan		
Good (points)	Fair (points)	Unsatisfactory (points)
15	7	0

(3) Leveraging—30 points maximum.

The third of the three criteria provided in 24 CFR 954.105 is: Leveraging of HOME funds. Leveraging means using HOME funds to attract or bring in other dollars. Leveraging is the degree to which other sources of assistance (including—but not limited to—loans, advances, equity investments, interest subsidies, State funds, and private contributions) are used in conjunction with HOME funds to carry out the proposed project. The application must identify the leveraged funding for the HOME project and whether the leveraged funding will be used to pay for an eligible HOME project cost. For example, a Bureau of Indian Affairs-funded road is only counted for leveraging purposes if it's a site improvement and then only to the extent it benefits the HOME project units (and that amount becomes part of the development cost). If the proposed HOME project is being funded with resources other than the HOME grant, the application must identify those resources and explain how they will be used. The application may propose some or all of those resources for leverage points. Proportionate amounts of each resource and the HOME grant should be expended at the same time, but if not, the application must explain why and identify when the HOME funds and the non-HOME funds will be spent.

Resources will be counted for leverage points only if they are in the possession of, or legally obligated to, the applicant before or within 90 calendar days of notification of grant award. For example, the contribution of land, goods, and services which come in or become available, or the prequalification of buyers for mortgage loans with a mortgage lender, before or within 90 calendar days of notification of grant award, fulfills this criterion. Contributions to a low-income housing tax credit program (LIHTC) where the funds do not become available to be expended for eligible project costs until 90 calendar days after notification of grant award do not fulfill this criteria. The use by the grantee of HOME grant funds for acquisition, rehabilitation, or construction will be conditioned upon the fulfillment of this criterion. If fulfillment does not occur, the grant will be withdrawn.

For consideration as leverage points, applicants must not submit information about the category of costs called indirect costs in OMB circular A–87. Such amounts are not counted for leverage points.

The phrase ''in-kind'' has been removed for leveraging points. Submit information about financial assistance for leverage points and identify it as land, goods, or services.

Whether or not leverage points are awarded, the use of additional funding to the tribe or family, including mortgage loans and LIHTC funding, is encouraged.

Applicants must provide documentation of the amount and sources of additional funds, including mortgage insurance, tribal funds, private contributions, tribal contributions directly related to the activity (labor, material, and equipment, as well as for soft costs, e.g., architectural and engineering costs), which are to be used in conjunction with HOME funds to carry out the proposed project.

Land already owned by the tribe shall not be counted. In the case of land donated by individuals or entities, it will be counted if the donation was contingent upon the receipt of the HOME award. Land value will be counted as a contribution only to the extent of its appraised value. All

appraisals shall be in conformance with established and generally recognized appraisal practices and procedures in common use by professional appraisers. Donated services will be accepted, provided that: first, the costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and second, comparable costs and time estimates are submitted that justify the costs attributable to the donated services or labor. Donated labor shall be valued at a level necessary for the work provided and shall be assessed at the skill level of the individual(s) providing the labor. Donated labor on construction work that is otherwise subject to prevailing wages under 24 CFR 954.4(f) must meet the requirements of § 954.4(f)(2) or (3).

The amounts recognized as leverage can include any other Federal grant or assistance program. However, do not propose to use Indian Health Service funding for leverage points; IHS funding is not being made available for HOME projects. Loans secured through mortgage loan insurance programs (e.g., section 184 loan guarantee) may be recognized as leverage.

Points will be awarded as presented in Table 12. Ratio as a percentage is calculated by dividing the number of dollars made available from other sources of assistance by the number of dollars of HOME funds requested in the application, and multiplying by 100. For example, when one hundred (or more) dollars are made available from other sources of assistance for each one hundred dollars of HOME funds requested in the application, the maximum number of points (30) is awarded. When sixty dollars are made available from other sources of assistance for each one hundred dollars of requested HOME funds, fifteen (15) points are earned.

TABLE 12.—SCORING GUIDE

Leveraging	
Ratio	Points
100% or more	30
80% but less than 100%	20
60% but less than 80%	15
40% but less than 60%	10
20% but less than 40%	5
Less than 20%	0

(e) Application Review

(1) Receipt, eligibility, correctable deficiencies, and non-correctable deficiencies.

(i) Receipt. Upon receipt of the application, the Area ONAP will note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received.

(ii) Eligibility. Each application will be screened at the Area ONAP for eligibility requirements. For the application to be rated and ranked, it must meet each eligibility requirement.

(iii) Correctable deficiencies. The opportunity to correct a technical, non-substantive deficiency is only given for those deficiencies which would *not* affect the evaluation of the application. Therefore, only minor administrative deficiencies are correctable. To assure uniform treatment, these are limited to a failure to submit a certification with the application or failure to submit a signed certification with the application. An applicant is not permitted to improve its application by filing statements that address substantive requirements after the due date for submissions has passed. If the application has correctable deficiencies, prior to a final determination on funding, the Area ONAP shall notify the applicant in writing of the correctable deficiencies and require their correction by the applicant within 14 calendar days of the issuance of notification.

(iv) Non-correctable deficiencies. If the application does not include all the items identified as non-correctable eligibility requirements, the Area ONAP shall not request any corrections for correctable deficiencies. The Area ONAP shall set the application aside. When HUD announces its decisions concerning the funding competition, the Area ONAP shall notify the applicant whose application did not meet the eligibility requirements.

(2) Eligibility requirements. Completeness will be determined by the Area ONAP as to whether the application includes all the non-correctable items, properly prepared and executed, identified in the Checklist of Eligibility Requirements and Application Submission Requirements under Appendix 2 of this NOFA. The Area ONAP screening does not include determining whether the application meets the minimum point score requirement. After screening, each application which meets the eligibility and application submission requirements set forth in this NOFA and those which are complete except for correctable deficiencies will be rated.

(3) Rating and ranking. Rating and ranking of applications will be carried out by a panel of HUD staff. The panel will review and rate each application which meets the eligibility requirements. The application ratings will be used to create an Initial Application Ranking List.

(i) Ranking. After the applications from all applicants have been rated by the Area ONAP panel of HUD staff, projects will be ranked by the scores into a single list. There will be a single list for each Area ONAP. For multi-project applications, each project will be rated and ranked individually.

(ii) Computation. Scores for ranking will be carried out to two decimal places (*e.g.*, 12.34).

(4) Selection. The ranking process will produce an ordered list of projects that may receive funding. The order is established by the number of points the project received in the rating process. The eligibility requirement for further consideration will be 60 out of 100 points. Project applications scoring lower than 60 points will be set aside as non-responsive and ineligible. After rating and ranking, applicants with the highest scores will be selected and offered awards *to the extent that funds are available.*

Note: The grantee must carry out an environmental review before any HOME funds are committed to an activity requiring such a review (acquisition, rehabilitation, or new construction, generally; administrative costs are exempt) and obtain approval of its request for release of funds under 24 CFR part 58, in accordance with 24 CFR 954.4.

(5) Tie Breaker. When rating results in a tie among projects, projects will be approved in the following order:

(i) Those that can be fully funded over those that cannot be fully funded;

(ii) Projects that benefit the greatest number of very low-income and low-income persons; and

(iii) Projects that benefit the highest percentage of the total population of the tribe.

(6) Errors. Area ONAP Administrators may make a determination that an arithmetic error has occurred in the rating or ranking of applications. Applicants may bring arithmetic errors in the rating and ranking of applications to the attention of Area ONAP within 90 days of being informed of their score. If an Area ONAP review determines that there was an arithmetic error that denied funding to the applicant, the Area ONAP will construct a hypothetical distribution that would have existed if the error had not been made, and the Area ONAP will determine what the funding would have been for the applicant subject to the funds that were available at the time. The applicant will be funded out of remaining funds in the challenged round of funding, or out of the next available round of funding.

II. Application Process

(a) Application Packages

Although this NOFA provides the public with notice of, and salient information about, the FY 1997 HOME program for Indian applicants, it is the application kit that provides applicants with further necessary information on how to participate in the program. Applicants should obtain a copy of the application kit, which includes copies of required forms, from any Area ONAP listed in Appendix 1.

(b) Submittal of Complete Application

Completed applications must be submitted to the Area ONAP having jurisdiction for the applicant at the address listed at Appendix 1. The application shall be submitted on Form 424 and shall be accompanied by all the legal and administrative attachments required by the form.

(c) Application Due Date

An applicant may submit an application for grant assistance to the Area ONAP having jurisdiction over the applicant after the publication of this NOFA in the **Federal Register** but before 3:00 P.M. Area ONAP local time on June 20, 1997. This application deadline is firm as to date and hour. The Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile (''FAX'') copies of applications will not be accepted.

III. Findings and Certifications

(a) Environment

This NOFA provides funding under, and does not alter the environmental requirements of, regulations in 24 CFR part 954. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Applicants must comply with the regulations in part 954, including the environmental review requirements in 24 CFR 954.4(d).

(b) Energy

Utility expenses place a heavy burden on Indian housing and often cause abandonment. Applicants are encouraged to address this problem in applications for funding. (Note: 24 CFR 954.401 provides: ''Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.'') See also 24 CFR 85.36(b)(7).

(c) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA shall 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. The NOFA is limited to providing funds to Indian tribes in accordance with a program to expand the supply of affordable housing. As a result, the NOFA is not subject to review under the order.

(d) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the provisions of this NOFA have the potential for indirect, although positive, impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA provides funds to Indian tribes in accordance with a program to expand the supply of affordable housing. To the extent that housing for families is increased, the impact on the family is indirect and beneficial. Accordingly, no further review is considered necessary.

(e) Section 102 of the HUD Reform Act

Documentation and Public Access Requirements; Applicant/Recipient disclosures:

Documentation and public access requirements. HUD shall ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, shall be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD shall include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 4.7 and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD shall make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) shall be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 4 subpart A, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) is codified at 24 CFR part 4 subpart B. Part 4 subpart B applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD's Ethics Law Division (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities. Section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. Section 1352 (the Byrd Amendment), which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal Executive or legislative officers or employees in connection with obtaining such assistance, or with its extension,

continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted.IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(g) Section 3

24 CFR part 135. Economic Opportunities for Low and Very Low Income Persons. All applicants are herein notified that section 3 of the Housing and Urban Development Act of 1968 and the regulations in 24 CFR part 135 are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. Applicants that receive Indian HOME Program assistance which exceeds $200,000 for housing rehabilitation or new construction shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

Catalog of Federal Domestic Assistance

(The Catalog of Federal Domestic Assistance number for this program is 14.239.)

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Dated: April 2, 1997.

Kevin Emanuel Marchman,

ActingAssistant Secretary for Public andIndian Housing.

APPENDIX 1.—LIST OF LOCAL OFFICES OF NATIVE AMERICAN PROGRAMS

Tribes located	Area ONAP address
East of the Mississippi River, Minnesota andIowa.	Eastern/Woodlands Office of Native American Programs, 5P,Metcalfe Federal Building,77 West Jackson Boulevard,Chicago, Illinois 60604–3507,(312) 886–4532 or (800) 735–3239,TDD Numbers: 1–800–927–9275 or 312–886–3741.
Louisiana, Missouri, Kansas, Oklahoma, and Texas (except for Isleta del Sur).	Southern Plains Office of Native American Programs, 6.IPI,500 West Main Street, Suite 400,Oklahoma City, Oklahoma 73102,(405) 553–7525.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, 8P,First Interstate Tower North,633 17th Street,Denver, Colorado 80202–3607,(303) 672–5457,TDD Number: 303–844–6158.
Arizona, California, New Mexico, Nevada, and Isleta del Sur in Texas.	Southwest Office of Native American Programs, 9EPID,Two Arizona Center,400 North Fifth Street, Suite 1650,Phoenix, Arizona 85004–2361,(602) 379–4197,TDD Number: 602–379–4461, or Albuquerque Division of Native American Programs, 9EPID,Albuquerque Plaza,201 3rd Street, NW, Suite 1830,Albuquerque, New Mexico 87102–3368,(505) 766–1372.
Idaho, Oregon, and Washington	Northwest Office of Native American Programs, 10PI,909 First Avenue, Suite 200,Seattle, Washington 98104–1000,(206) 220–5271,TDD Number: (206) 220–5185.
Alaska	Alaska Office of Native American Programs, 10.1PI,949 East 36th Avenue, Suite 401,Anchorage, Alaska 99508–4399,(907) 271–4603,TDD Number: (907) 271–4328.

Appendix 2—Checklist of Eligibility Requirements and Application Submission Requirements

Applications must meet the requirements in (1) and (2), below. Except for the certifications in (2)(iii) and (2)(iv), these requirements are non-correctable after the closing of the application submission period.

(1) Each application must be:

(i) _____ From an eligible applicant.

(ii) _____ If the applicant proposes to involve its IHA, the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135. (A resolution may be attached which authorizes another entity, e.g., a housing authority, to prepare the application on behalf of the tribe; however, the tribe must be the applicant and sign the application.)

(iii) _____ There is no information to indicate that the eligible applicants and involved IHA lack the administrative capacity to undertake the project proposed.

(iv) _____ For one or more Indian HOME Program eligible projects.

(v) _____ For not more than a $2.0 million grant.

(vi) _____ For a grant amount not in excess of 115% of the maximum per-unit subsidy amount (24 CFR 954.400).

The maximum per-unit subsidy amount is the total development cost standard for the area. Maximum allowable Total Development Costs (''TDCs'') are established by location and by unit size (size is expressed as number of bedrooms). Maximum allowable TDCs are available from the Area ONAP for each applicant community. To determine whether the HOME grant amount requested satisfies this limitation, multiply the maximum allowable TDC for each size by the proposed number of units, add the products, multiply by 115%, and compare the result to the HOME grant amount requested. The grant amount request may not be more than this amount.

(vii) _____ Submitted with an original and one copy.

(viii) _____ From an applicant with not more than one HOME grant. An application from an applicant with two or more HOME grants that are not closed out pursuant to the requirements of § 954.504 will be set aside and not rated.

(2) Each application must contain the following:

(i) _____ Transmittal Letter.

(ii) _____ Standard Form-424, Application for Federal Assistance. Complete side one only. Name of the eligible applicant, e.g., a tribe or an authorized Tribal organization, must be in field 5, legal applicant. A resolution may be attached which authorizes another entity, e.g., a housing authority, to prepare the application on behalf of the eligible applicant; however, the eligible applicant must be the applicant and sign the application. The Catalog of Federal Domestic Assistance identifies this program as program number 14.239.

(iii) _____ Form HUD–4126, which contains the following certifications:

(A) A certification that the applicant shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of 24 CFR 954.4.

(B) A certification that the applicant shall use HOME funds in compliance with all the requirements of 24 CFR part 954, the Indian HOME program final rule.

(C) Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F.

(D) Debarment. The certification that neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24.

(E) Audits. A certification that the applicant does not have an outstanding Indian HOME or ICDBG obligation to HUD that is in arrears, or it has agreed to a repayment schedule. A certification that the applicant does not have an overdue or unsatisfactory response to an audit finding(s).

(F) Fire Safety. A certification that the applicant shall comply with the requirements of the Fire Authorization Administration Act of 1992 (Pub. L. 102–522).

(G) Economic Opportunities for Low-Income and Very Low-Income Persons. A certification that the applicant shall comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 and the regulations in 24 CFR part 135 to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

(iv) _____ Drug-free workplace. In order to fulfill OMB requirements, a separate, complete text certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F.

(v) _____ Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart A of 24 CFR part 4, Accountability in the Provision of HUD Assistance.

(vi) _____ Form HUD–4121-I, Indian HOME Program Grants. Comprehensive Approach; component that addresses the Comprehensive Approach For Expanding The Supply Of Affordable Housing. Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS), a Tribal Housing Plan, or a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

(vii) _____ Form HUD–4122-I, Indian HOME Program Grants. Project Summary; component that addresses the summary description of the proposed project.

(viii) _____ Operation Plan. All proposed projects that shall be operated as rental projects MUST include a management and maintenance plan and a staffing plan for these functions. An agreement with the tribal IHA to manage the units is not sufficient as a management and maintenance staffing plan; the IHA must include projected staffing to carry out these functions.

(ix) _____ Form HUD–4125-I, Indian HOME Program Grants. Implementation Schedule.

(x) _____ Form HUD–4123-I, Indian HOME Program Grants. Cost Summary.

(xi) _____ Project location map.

(xii) _____ Components that address the selection criteria. The applicant must provide a narrative and supporting documentation that are responsive to the selection criteria of sections I.(d)(1), (2), and (3) of this NOFA. This includes, but is not limited to, a description of how the HOME funds shall be used, and the various kinds of information that are necessary in order to apply the selection criteria and rating factors.

[FR Doc. 97–9306 Filed 4–10–97; 8:45 am]

BILLING CODE 4210–33–P

federal register

Friday
April 11, 1997

Part VII

Department of the Treasury

Fiscal Service

31 CFR Part 357

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends 31 CFR part 357, the general regulations governing book-entry Treasury securities, to provide a new schedule for the provision of a statement of account and to provide for the provision of a confirmation notice to the TREASURY DIRECT investor. This rule also provides that the statement of account and confirmation notice may be sent by electronic means. The change will benefit the TREASURY DIRECT investor by ensuring that each investor will receive a statement of account at least yearly. The confirmation notice will also benefit the investor by providing notification of a change in an account master record, notification upon the scheduling or canceling of a reinvestment and by confirming the interest that an investor has earned on an inflation indexed security.

DATES: Effective on March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen Parker, Director, Division of Securities Systems, Bureau of the Public Debt (304) 480–7761; Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (304) 480–5192.

SUPPLEMENTARY INFORMATION: A revised timetable has been created to provide the TREASURY DIRECT investor a statement of account, which contains detailed information about the investor's TREASURY DIRECT account. Such statement will be sent upon the establishment of an account master record, upon a change in the securities portfolio, at an owner's request, or if it is determined on December 31 that an owner has not received a statement of account for that current calendar year. In addition to the revised timetable for the statement of account, this amendment provides that the investor will be sent a confirmation notice upon a change in an account master record, the scheduling or cancellation of a reinvestment, or to confirm the interest earned on a Treasury Inflation Indexed Security. In addition, this amendment will permit such statement and notice to be sent by electronic means.

Procedural Requirements

It has been determined that this final rule does not meet the criteria for a ''significant regulatory action,'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for U.S. securities. Accordingly, pursuant to 5 U.S.C. 553(a)(2), the notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no new collections of information contained in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3504(h)) does not apply.

List of Subjects in 31 CFR Part 357

Banks, Banking, Bonds, Federal Reserve System, Government securities.

Dated: April 4, 1997.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set out in the preamble, 31 CFR Part 357 is amended as follows:

PART 357—GENERAL REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS

1. The authority citation for Part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter 31, 5 U.S.C. 301 and 12 U.S.C. 391.

2. Section 357.20 is amended to revise paragraph (e), to redesignate paragraph (f) as paragraph (g), and to add a new paragraph (f) to read as follows:

§ 357.20 Securities account in TREASURY DIRECT.

* * * * *

(e) Statement of account. The Department shall send a statement of account (statement):

(1) Upon the establishment of an account master record;

(2) Upon a change in the securities portfolio;

(3) At an owner's request; or

(4) Upon the determination on December 31 that an owner has not received a statement of account for that current calendar year.

* * * The statement may be sent to the correspondence address designated in the account master record, or may be sent by electronic means.

* * * * *

(f) Confirmation notice. The Department shall send a confirmation notice (notice):

(1) Upon a change in an account master record;

(2) Upon scheduling or canceling a reinvestment; or

(3) To confirm the interest earned on a Treasury Inflation Indexed Security. The notice shall contain information regarding the account as of the date of such confirmation. The notice may be sent to the correspondence address designated in the account master record, or may be sent by electronic means. All changes reflected in paragraph (f) (1) and (2) of this section will be included in the next regularly scheduled statement of account. See paragraph (e) of this section for the statement schedule.

[FR Doc. 97–9332 Filed 4–10–97; 8:45 am]

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federal register

Friday
April 11, 1997

Part VIII

Department of Education

Office of Educational Research and Improvement (OERI)—Education Research and Development Centers Program (Center on Policy and Teaching Excellence); Notice Inviting Applications for a New Award for FY 1997 and Notice of Final Priority for FY 1997

DEPARTMENT OF EDUCATION

[CFDA Number: 84.308B]

Office of Educational Research and Improvement (OERI)—Education Research and Development Centers Program (Center on Policy and Teaching Excellence); Notice Inviting Applications for a New Award for Fiscal Year (FY) 1997

Purpose of Program: To support a national research and development center to carry out sustained research that will lead to improvements in policymaking and policies to support excellence in teaching.

Eligible Applicants: Institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

Deadline for Receipt of Applications: June 6, 1997.

Note: All applications must be received on or before that date. This requirement takes exception to EDGAR, 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

Applications Available: April 17, 1997

Estimated Available Funds: The estimated funding level over the five-year project period for the national research center on policy and teaching excellence is $1,500,000 each year. Actual funding will depend upon the availability of funds and needs as reflected in the approved application.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR Part 700.

Priority: The absolute priority in the notice of final priority and post-award requirements for this program, as published elsewhere in this issue of the **Federal Register** apply to this competition.

Selection Criteria

(a) The Secretary uses the selection criteria in 20 U.S.C. 6031(c)(3)(E) (i)–(vi) and 34 CFR 700.30(e) to evaluate applications for new grants under this program.

(b) (1) The Secretary has incorporated the statutory selection criteria into the criteria established under 34 CFR 700.30. The statutory criteria are: (3)(ii)(C), (4)(ii)(D), (4)(ii)(E), (5)(ii)(D), (5)(ii)(E), and (5)(ii)(F).

(2) The maximum score for each criterion is indicated in parentheses (34 CFR 700.3(c)).

(3) The maximum score for all of these criteria is 100 points.

(c) The criteria.

(1) *National Significance.* (30 points)

(i) The Secretary considers the national significance of the proposed project.

(ii) In determining the national significance of the proposed project, the Secretary considers the following factors:

(A) The importance of the problem or issue to be addressed.

(B) The potential contribution of the project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(C) The potential contribution of the project to the development and advancement of theory and knowledge in the field of study.

(D) The nature of the products (such as information, materials, processes, or techniques) likely to result from the project and the potential for their effective use in a variety of other settings.

(2) *Quality of the Project Design.* (30 points)

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) Whether there is a conceptual framework underlying the proposed activities and the quality of that framework.

(B) Whether the proposed activities constitute a coherent, sustained program of research and development in the field, including a substantial addition to an ongoing line of inquiry.

(C) The extent to which the research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and use of appropriate theoretical and methodological tools, including those of a variety of disciplines, where appropriate.

(D) The quality of the plan for evaluating the functioning and impact of the project, including the objectivity of the evaluation and the extent to which the methods of evaluation are appropriate to the goals, objectives, and outcomes of the project.

(3) *Quality and Potential Contributions of Personnel.* (20 points)

(i) The Secretary considers the quality and potential contributions of personnel for the proposed project.

(ii) In determining the quality and potential contributions of personnel for the proposed project, the Secretary considers the following factors:

(A) The qualifications, including training and experience, of the project director or principal investigator.

(B) The qualifications, including training and experience, of key project personnel.

(C) Whether the applicant has assembled a group of high quality researchers sufficient to achieve the mission of the center.

(4) *Adequacy of Resources.* (10 points)

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The adequacy of support from the lead applicant organization.

(B) The relevance and commitment of each partner in the project to the implementation and success of the project.

(C) Whether the costs are reasonable in relation to the objectives, design, and potential significance of the project.

(D) Whether the proposed organizational structure and arrangements will facilitate achievement of the mission of the center.

(E) Whether the directors and support staff will devote a majority of their time to the activities of the center.

(5) *Quality of the Management Plan.* (10 points)

(i) The Secretary considers the quality of the management plan of the proposed project.

(ii) In determining the quality of the management plan of a proposed project, the Secretary considers the following factors:

(A) The adequacy of the management plan to achieve the objectives of the project, including the specification of staff responsibility, timelines, and benchmarks for accomplishing project tasks.

(B) The adequacy of plans for ensuring high-quality products and services.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the project,

including those of parents and teachers, where appropriate.

(D) Whether there is substantial staff commitment to the work of the center.

(E) The contributions of primary researchers (other than researchers at the proposed center) and the appropriateness of such researchers' experiences and expertise in the context of the proposed center activities, and the adequacy of such primary researchers' time and commitment to achievement of the mission of the center.

(F) The manner in which the results of the education research will be disseminated for further use, including how the center will work with the Office of Reform Assistance and Dissemination.

For Applications or Information Contact: Ron Anson, U.S. Department of Education, 555 New Jersey Avenue, N.W., Washington, D.C. 20208–5510. Telephone: (202) 219–2214. Internet address: (ron__anson@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 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 or discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 6031(c)(1)(B)(i).

Dated: April 7, 1997.

Ramon C. Cortines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–9314 Filed 4–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Educational Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year (FY) 1997.

SUMMARY: The Secretary announces a final priority under the Educational Research and Development Centers Program. The Secretary takes this action to support research on policymaking and policy structures to achieve excellence in teaching.

EFFECTIVE DATE: This priority takes effect on May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Anson, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5510. Telephone: (202) 219–2214. Internet: (ron__anson@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Office of Educational Research and Improvement, authorized under Title IX of Public Law 103–227, (20 U.S.C. 6001 *et seq.*) supports educational research and development activities. The National Institute on Educational Governance, Finance, Policy-Making, and Management is one of five research institutes that carry out coordinated and comprehensive programs of research, development, evaluation, and dissemination activities designed to provide research-based leadership for the improvement of education.

The National Institute on Educational Governance, Finance, Policy-Making, and Management supports a range of research, development, and dissemination activities focused on core issues in education. Activities are carried out by national research and development centers, field-initiated studies, and a variety of directed research, development, and dissemination activities.

The Secretary believes that increasing the capacity of the nation's education system to improve the quality of education depends on knowledge generated by an enduring program of education research and development. Knowledge gained from education research and development can help guide the national investment in education and support local and State improvement efforts. The final priority for research on policy and teaching excellence is for a research and development center to be supported by the National Institute on Educational Governance, Finance, Policy-Making, and Management.

Because they carry out sustained, long term research and development, centers are a primary mechanism for pursuing new knowledge about education. Center awards are made to institutions of higher education, institutions of higher education in consort with public agencies or non-profit organizations, and interstate agencies established by compact that operate subsidiary bodies to conduct postsecondary education research and development.

Prior to this announcement and in conjunction with planning for Educational Research and Development Center competitions in fiscal year 1996, OERI engaged in a series of meetings, regional hearings, and **Federal Register** notices that solicited advice from parents, teachers, administrators, policy-makers, business people, researchers, and others to identify the most needed research and development activities. Following these activities and subsequent research priorities planning meetings in which OERI engaged, the Secretary published a notice of proposed priority in the **Federal Register** on February 18, 1997 (62 FR 7218) for a national educational research and development center that would carry out sustained research and development to address problems and issues related to policy and teaching excellence. Written public comments were to be submitted to the Secretary by March 20, 1997.

The Secretary reviewed the written public comments and made no changes to the proposed priority. The reasoning for this decision is explained in the Appendix to this notice.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, eight parties submitted written comments. An analysis of the comments is published as an appendix to this notice of final priority. Major issues are grouped according to subject. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Absolute Priority: Policy and Teaching Excellence

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only one application that meets the priority listed below. Funding this priority will depend on the availability of funds and the quality of applications received. The Secretary supports a national research and development center on research on policy and teaching excellence.

(A) This center must—

(1) Conduct a coherent, sustained program of research and development to address problems and issues of national significance in the specific priority area, using a well-conceptualized and theoretically sound framework;

(2) Contribute to the development and advancement of theory in the specific priority area;

(3) Conduct scientifically rigorous studies capable of generating findings that contribute substantially to understanding the field;

(4) Conduct work of sufficient size, scope, and duration to produce definitive guidance for improvement efforts and future research;

(5) Address issues of both equity and excellence in education for all students in the specific priority area; and

(6) Document, report, and disseminate information about its research findings and other accomplishments in ways that will facilitate effective use of that information by decisionmakers and others as appropriate.

(B) In carrying out its program of work, the center must also:

(1) Conduct research and development on the full range of policy issues relevant to teaching excellence and other associated policy issues;

(2) Conduct a program of research and development that will aid policymakers throughout the Nation at all levels of government and at all levels of the educational system to improve policies and policy decisions, as well as policy formulation, implementation, and evaluation processes, in order to achieve the goal of teaching excellence and ensure continuous efforts related to that goal;

(3) Examine the effects that different policies for fostering or sustaining teaching excellence, or both, have on continuous school improvement, teacher performance, and student learning;

(4) Examine the interactions of various policies affecting teacher performance and teaching excellence and the costs and benefits of different policies;

(5) Examine the role of policy coordination and alignment in the creation of an overall policy structure that supports excellence in teaching; and

(6) If appropriate, investigate education policies in other nations as they relate to and can inform education policies in the United States.

Post-Award Requirements

The Secretary establishes the following post-award requirements consistent with the Educational Research, Development, Dissemination and Improvement Act of 1994. A grantee receiving a center award must:

(a) Collaborate with OERI and appropriate clients in identifying significant new issues and provide OERI with information about center projects and products and other appropriate research information so that OERI can monitor center progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

(b) Reserve five percent of each budget period's funds to support activities that fall within the center's priority area, are designed and mutually agreed to by the center and OERI, and enhance OERI's ability to carry out its mission. These activities may include developing research agendas, conducting research projects collaborating with other federally-supported entities, and engaging in research agenda setting and dissemination activities; and

(c) Provide yearly summaries of findings usable by education decisionmakers and practitioners and others as appropriate and, at the end of the award period, synthesize the findings and advances in knowledge that resulted from the center's program of work and describe the potential impact on the improvement of American education, including any observable impact to date.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

(Catalog of Federal Domestic Assistance Number 84.308B: Educational Research and Development Centers Program)

Program Authority: P.L. 103–227, Title IX (20 U.S.C. 6031)

Dated: April 7, 1997.

Ramon C. Cortines,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix—Analysis of Comments and Changes

Summarized below are comments which referred to the Absolute Priority.

Focusing Research on Specific Subject Matter Areas

Comments: Two commenters advocated that research on teaching excellence be done in specific subject matter areas. One commenter further recommended making secondary mathematics and science a priority for a subject area to be researched.

Discussion: The Secretary believes that grant applicants should be allowed maximum flexibility to propose research agendas within the absolute priority area. Therefore, those applicants who wish to make the case for a subject-specific approach to this area are free to do so.

Changes: None.

Range of Issues Related to Teacher Development

Comments: Two commenters indicated that the research should address the sequence of teacher professional development, i.e., recruitment, pre- and in-service training, induction, allocation of teachers across and within schools, retention, and the provision of appropriate organizational settings and economic and psychological incentives to enhance and maintain teaching excellence.

Discussion: The Secretary agrees that policies concerning the range of issues related to teaching are important and believes these are covered under (B)(1) which asks for research on ''the full range of policy issues relevant to teaching excellence and other associated policy issues.''

Changes: None.

Gender Equity

Comment: One commenter recommended that the center include a project for preparing and supporting teachers to promote gender equity.

Discussion: The Secretary agrees that promotion of gender equity is an important topic and believes this topic is covered under (A)(5) and may be included as the applicant sees fit.

Changes: None.

Broader Context of Education Reform and Its Effects on Teaching Excellence

Comments: Three commenters addressed issues concerning the broader context in which teaching excellence takes place. Their comments stated that too narrow a focus on teaching policy will not include the many ways policy affects teaching excellence. In particular they mentioned the need to study the interaction between subsystems such as finance, governance, teaching expectations, teacher testing, outside school influences, public opinion, labor relations, and economic, organizational and psychological influences.

Discussion: The Secretary agrees that the study of policy and teaching excellence includes the study of the context in which teaching excellence occurs and believes such concerns are covered in the multiple statements under (B) (2) to (5) and may be included as the applicant sees fit.

Changes: None.

Relationship Between Teaching and Learning

Comment: Two commenters recommended that the connection between teaching and student learning or educational productivity be made more explicit.

Discussion: The Secretary agrees that the relationship between teaching and learning is important and believes it is addressed in (B)(3), ''* * * the effects that different policies for fostering or sustaining teaching excellence or both have on continuous school improvement, teacher performance, and student learning.''

Changes: None.

Variable Policy Effects Depending on Geographic and Demographic Variation

Comment: One commenter noted that policies may have different effects depending upon the state or region in which policies are carried out or the demographics of those being affected, e.g., the disproportionate relationship between the number of male administrators and of female teachers or the racial imbalance in predominately minority school districts.

Discussion: The Secretary agrees that there may be variability in the effects of policies and believes that (A) (3) and (4), which require ''scientifically rigorous studies'' that are of ''sufficient size, scope * * *'' address this concern. In addition, the priorities addressing context, (B) (2) to (5), also address these issues.

Changes: None.

Involvement of a Variety of Researchers and Decisionmakers in Carrying Out the Research

Comment: One commenter recommended that experts outside the traditional education system be part of the research framework and stated that substantive connections with the policy community are essential.

Discussion: The Secretary agrees that research on policy and teaching excellence should take advantage of a wide range of expertise and experience and believes (A) (3) and (4), requiring ''rigorous studies'' of ''sufficient * * * scope'' plus (B) (2) to (5) address this concern.

Changes: None.

Unintended Consequences of Policies

Comment: One commenter stated that we often learn most from looking at how well-intended policies may inhibit the education system by over prescription and allowing micro-management.

Discussion: The Secretary agrees that studying unintended consequences of policies is often important and believes this is addressed under (B) (3) and (4).

Changes: None.

Diversity and the Teacher Workforce

Comment: One commenter encouraged a specific focus for the research on the role of minorities in the teaching workforce due to the diversity of the student population.

Discussion: The Secretary agrees that issues concerning minorities in the teaching workforce are important and believes that (A(1) ''to address problems and issues of national significance'' and (B)(1) to ''conduct research and development on the full range of policy issues relevant to teaching excellence and other associated policy issues'' include the opportunity to address the issues surrounding minorities in the teaching workforce.

Changes: None.

[FR Doc. 97–9315 Filed 4–10–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
April 11, 1997

Part IX

Department of Education

Research in Education of Individuals With Disabilities Program; Notice of Final Priority and Notice Inviting Application for New Awards for FY

DEPARTMENT OF EDUCATION

Research in Education of Individuals with Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Secretary announces a final priority for the Research in Education of Individuals with Disabilities Program. The Secretary may use this priority in Fiscal Year 1997 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. This final priority is intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: This priority takes effect on May 12,1997.

FOR FURTHER INFORMATION CONTACT: For further information on this priority contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–9860. Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above.

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides support to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

On February 21, 1996, the Secretary published a notice of proposed priority for this program in the **Federal Register** (61 FR 6754–6755).

This final priority supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of this priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, five parties submitted comments. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority—Research Institutes to Accelerate Learning for Children With Disabilities With Curricular and Instructional Interventions

Comment: Two commenters noted that minority students comprise a disproportionate number of special education students, and that as students advance in grades the performance gap between African Americans and their white counterparts increases. The commenter recommended that the priority require involvement of minority researchers either as staff of the project or require collaboration with minority institutions of higher education to ensure that the specific educational needs of minority group students with disabilities will be addressed by the research institute.

Discussion: The priority, as written, requires research across multiple sites to represent organizational and demographic diversity, collaboration with experts and researchers in related subject matter and methodological fields, as appropriate. In addition, the selection criteria that will be used to evaluate applications include criteria for determining how the applicant will provide equal access and treatment for eligible project participants who are members of racial or ethnic minority groups; and the extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of racial or ethnic minority groups that have been traditionally underrepresented.

Changes: None.

Comment: One commenter recommended that the priority address the needs of students with low-incidence disabilities as a main area of concern. Specifically, the commenter recommended the priority emphasize students with deafness, blindness, and physical disability, who also experience secondary and tertiary disabilities such as developmental disability, behavior disorder, and multiple disabilities.

Discussion: The priority as written does not preclude an applicant from addressing the needs of students with low-incidence disabilities as a main area of concern. The Secretary prefers that the language of the priority be broad enough so that applicants may have the opportunity to propose and justify their particular project focus.

Changes: None.

Comment: Two commenters recommended that the priority be broadened to include students with disabilities through the eighth grade to include more middle school students. One commenter noted that in many States, students enter middle schools in the 5th or 6th grade, thus the proposed limit of grade six may prevent school-wide intervention programs in some areas. Furthermore, the commenters stated that it may be useful to follow students in the upper middle school grades who have completed interventions in grades K–6.

Discussion: The Secretary agrees with the commenters that it would be very useful to follow students in the upper middle school grades in addition to students in kindergarten through grade six. In order to accomplish this, the Secretary believes that the most beneficial approach would be to support two institutes instead of one. One institute would focus on curricular and instructional classroom based interventions that accelerate subject matter learning for children with disabilities in kindergarten through grade three, and the second institute would focus on grades four through eight.

Changes: The title and priority has been revised to establish two research institutes to study curricular and instructional classroom based interventions that accelerate subject matter learning for children with disabilities and promote its sustained use by practitioners. One institute would study curricular and instructional classroom based interventions in kindergarten through grade three. The other institute would study curricular and instructional classroom based interventions in grades four through grade eight.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to

applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Absolute Priority—Research Institutes to Accelerate Learning for Children With Disabilities With Curricular and Instructional Interventions: Kindergarten Through Grade Three and Grade Four Through Grade Eight

Background

The consequences of failing to learn are serious. Lack of learning in one domain reduces an individual's capacity to benefit from educational experience. Failure establishes a self-perpetuating cycle and negatively affects the individual's disposition toward lifelong learning, employment, and contribution to society. Most children with disabilities face challenges to learning. These challenges are amplified as calls are made for higher standards to be achieved by all students, including children with disabilities, and as more children with disabilities are educated in general education classrooms.

Evidence from the National Longitudinal Transition Study indicates children with disabilities are not learning subject matter content. An urgency exists to develop powerful curricular and instructional interventions that maximize rates of development, promote generalized learning, and reduce discrepancies between their performance and that of their peers.

Intervention research has demonstrated that children with disabilities possess the potential to learn, participate, and contribute in school, home, community, and work place. Research on instructional interventions for children with disabilities has been the hallmark of special education research. For example, research on direct instruction, behavioral management interventions, learning strategies, peer mediated learning, and reciprocal teaching has led to improvements in professional practice.

Yet, single solution interventions are insufficient for teaching children with disabilities complex subject matter content. In many instances, these interventions are content free. Moreover, little empirical evidence is available on the context of the classroom for supporting the implementation of these solutions.

Priority

The Secretary establishes an absolute priority for the purpose of establishing two research institutes to study curricular and instructional classroom based interventions that accelerate subject matter learning for children with disabilities and promote its sustained use by practitioners. One institute will be established to study curricular and instructional classroom based interventions that accelerate subject matter learning in kindergarten through grade three. Another institute will be established to study curricular and instructional classroom based interventions that accelerate subject matter learning in grade four through grade eight.

Both institutes must examine—

(1) The effectiveness of the intervention for children with disabilities; and

(2) The classroom context that supports the implementation of the interventions that produce and sustain positive learning outcomes for children with disabilities, including such factors as classroom groups; classroom and cross-classroom management strategies; curriculum design principles; classroom settings; instructional materials; amount of time on task; integration into the curriculum; and teacher actions, skills, and attitudes.

The research may include, but need not be limited to, studying classroom based exemplars and models, designing and implementing interventions, and collecting student and teacher data from exemplars, using a rich array of research methods to reach the intended goals of this priority and as articulated by the proposed research hypotheses.

Both the Kindergarten through Grade Three Research Institute, and the Grade Four through Grade Eight Research Institute must—

(a) Design and conduct a strategic program of research that focuses on helping students with disabilities learn subject matter content in critical areas such as reading and math, and builds upon the existing research knowledge for teaching children with disabilities;

(b) Design and conduct a strategic program of research across multiple sites to represent organizational and demographic diversity;

(c) Collect, analyze, and communicate student outcome data and supporting context data, and multiple outcome data for teachers, parents, and administrators, as appropriate;

(d) Collaborate with other research institutes supported under the Individuals with Disabilities Education Act and experts and researchers in related subject matter and methodological fields, as appropriate for the program of research, to design and conduct the strategic program of research;

(e) Collaborate with communication specialists and professional and advocacy organizations to ensure that findings are prepared in formats that are useable for specific audiences such as teachers, administrators, and other service providers;

(f) Develop linkages with Education Department technical assistance providers to communicate research findings and distribute products;

(g) Provide training and research opportunities for a limited number of graduate students including students who are from traditionally underrepresented groups; and

(h) Meet with the Office of Special Education Programs (OSEP) project officer in the first four months of the project to review the program of research and communication approaches.

The project must budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) another meeting to meet and collaborate with the OSEP project officer.

Under this priority, The Secretary will make two awards:

(a) One award for a Research Institute to Accelerate Learning for Children with Disabilities with Curricular and Instructional Interventions in Kindergarten through Grade Three; and

(b) One award for a Research Institute to Accelerate Learning for Children with Disabilities with Curricular and Instructional Interventions in Grade Four through Grade Eight.

Both awards will be for cooperative agreements with project periods of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institutes for the fourth and fifth years of the project periods, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(1) The recommendation of a review team for each institute consisting of three experts selected by the Secretary. The services of the review teams, including a two-day site visit to the institutes are to be performed during the last half of each institute's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review teams must also be included in each institute's budget for year two. These costs are estimated to be approximately $4,000 for each institute;

(2) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have

been or are being met by each institute; and

(3) The degree to which each institute's research designs and methodologies demonstrate the potential for advancing significant new knowledge.

Applicable Program Regulations: 34 CFR Part 324.

Program Authority: 20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Dated: April 8, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–9401 Filed 4–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023V]

Research in Education of Individuals With Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to learn successfully.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 324.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority

Absolute Priority—Research Institutes to Accelerate Learning for Children With Disabilities With Curricular and Instructional Interventions: Kindergarten Through Grade Three and Grade Four Through Grade Eight (84.023V)

The priority Research Institutes to Accelerate Learning for Children with Disabilities with Curricular and Instructional Interventions: Kindergarten through Grade Three and Grade Four through Grade Eight in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications available: April 16, 1997.

Deadline for Transmittal of Applications: June 2, 1997.

Estimated Number of Awards: Two.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $700,000 for any single budget period of 12 months. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 60 double-spaced 8 ½ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). This page limitation applies to all material presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resumes, bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch. Double-spacing and font requirements do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable. The Secretary rejects and does not consider an application that does not adhere to these requirements.

Note: The Department of Education is not bound by any estimates in this notice.

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Dated: April 8, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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